

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF VIRGINIA
3 CHARLOTTESVILLE DIVISION

4 ELIZABETH SINES, ET AL., CIVIL CASE NO.: 3:17CV72
5 OCTOBER 25, 2021, 9:25 AM
6 JURY TRIAL, DAY 1

Plaintiffs,
vs.

7 Before:
8 HONORABLE NORMAN K. MOON
9 UNITED STATES DISTRICT JUDGE
JASON KESSLER, ET AL., WESTERN DISTRICT OF VIRGINIA

Defendants.

11 APPEARANCES:

13 For the Plaintiffs: ALAN LEVINE, ESQUIRE
14 COOLEY LLP
15 1114 Avenue of the Americas, 46th
Floor
New York, NY 10036
212.479.6260

16 DAVID E. MILLS, ESQUIRE
17 COOLEY LLP
18 1299 Pennsylvania Avenue, NW,
Suite 700
Washington, DC 20004
19 202.842.7800

22 Court Reporter: Lisa M. Blair, RPR, RMR, CRR, FOCR
23 255 West Main Street, Suite 304
Charlottesville, Virginia 22902
434.296.9284

24 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY;
25 TRANSCRIPT PRODUCED BY COMPUTER.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 APPEARANCES CONTINUED:

2 For the Plaintiffs: MICHAEL L. BLOCH, ESQUIRE
3 ROBERTA A. KAPLAN, ESQUIRE
4 RAYMOND P. TOLENTINO, ESQUIRE
Kaplan Hecker & Fink LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
212.763.0883

6 KAREN L. DUNN, ESQUIRE
7 WILLIAM A. ISAACSON, ESQUIRE
JESSICA E. PHILLIPS, ESQUIRE
GIOVANNI SANCHEZ, ESQUIRE
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
2001 K Street, NW
Washington, DC 20006
202.223.7300

11 For the Defendants: DAVID L. CAMPBELL, ESQUIRE
12 Duane, Hauck, Davis, Gravatt &
Campbell, P.C.
13 100 West Franklin Street, Suite 100
Richmond, VA 23220
14 804.644.7400

15 CHRISTOPHER CANTWELL, PRO SE
16 #00991-509
USP Marion
17 4500 Prison Road, PO Box 2000
Marion, IL 62959

18 BRYAN J. JONES, ESQUIRE
19 Bryan J. Jones, Attorney at law
106 W. South Street, Suite 211
Charlottesville, VA 22902
20 540.623.6952

21 JAMES E. KOLENICH, ESQUIRE
22 Kolenich Law Office
9435 Waterstone Blvd., Suite 140
Cincinnati, OH 45249
23 513.444.2150

24

25

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 APPEARANCES CONTINUED:

2 For the Defendant: WILLIAM E. REBROOK, IV, ESQUIRE
3 The ReBrook Law Office
4 6013 Clerkenwell Court
Burke, VA 22015
571.215.9006

6 JOSHUA SMITH, ESQUIRE
Smith LLC
7 807 Crane Avenue
Pittsburgh, PA 15216
917.567.3168

8 RICHARD SPENCER, PRO SE
P.O. Box 1676
9 Whitefish, MT 59937

10 ALSO PRESENT:

11 Renato Stabile, Esq.

12 Faye Honig

13

14

15

16

17

18

19

20

21

22

23

24

25

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 (Proceedings commenced, 9:25 a.m.)

2 THE COURT: All right. Good morning. I'm going to
3 remove my mask when I speak, and anyone else who is speaking
4 may remove theirs.

5 If you would call the case, please.

6 THE CLERK: Yes, Your Honor. This is Civil Action
7 Number 3:17-CV-72, Elizabeth Sines and others versus Jason
8 Kessler and others.

9 THE COURT: Are the plaintiffs ready?

10 MS. DUNN: We are, Your Honor.

11 THE COURT: Defendants ready?

12 MR. KOLENICH: Yes, Your Honor.

13 MR. JONES: Yes, Your Honor.

14 THE COURT: All right. Before we begin, I will
15 remind everyone that under Standing Order 2020-12 and 2013-8,
16 the Court's prohibition against recording and broadcasting
17 court proceedings remains in force. Attorneys, parties, and
18 their staff and members of the public or press accessing this
19 proceeding today may not record or broadcast it. That means no
20 photography, no using of video or audio recording device, no
21 rebroadcasting, live streaming or otherwise disseminating any
22 live or recorded video or audio of this proceeding.

23 Given the number of parties and counsel in this case,
24 I will ask any counsel or *pro se* litigant who is speaking to
25 first state who they are, and if they are counsel, who they

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 represent before speaking. We have litigants and counsel in
2 the courtroom, and we may have some who are accessing this
3 trial remotely by videoconference.

4 First I will ask plaintiffs' counsel who will be
5 speaking today to note their appearance -- not all day, but on
6 the Cantwell matter.

7 MS. KAPLAN: Your Honor, Roberta Kaplan for
8 plaintiffs from Kaplan Hecker & Fink. I will be speaking on
9 the Cantwell matter.

10 THE COURT: Defense counsel, who in the courtroom?
11 If you choose to speak, identify yourself at the time.

12 Next, any defense counsel who are participating
13 remotely by Zoom or videoconference, if you speak, identify
14 yourself at the time.

15 Lastly, do we have any defendants representing
16 themselves *pro se* in the courtroom? Mr. Cantwell?

17 MR. CANTWELL: We do. Christopher Cantwell, *pro se*.

18 MR. SPENCER: Also Mr. Spencer, *pro se*.

19 THE COURT: For those participating remotely, you
20 will need to identify yourself before you say anything. You
21 should plan on messaging, flagging the clerk responsible for
22 the remote proceedings, Ms. Moody, who will be able to alert
23 the Court if you have something to say.

24 Finally, one brief statement about the Court's
25 COVID-19 precautions. I will go into more detail with the

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 prospective jurors so they are aware of the steps the Court has
2 taken to mitigate any risk of COVID-19. But for now we'll say
3 everyone should wear a mask over their nose and mouth when they
4 are not speaking. If you are speaking on the record, you may
5 need to temporarily remove your mask or speak up to the
6 microphone so you can be heard.

7 Stay socially distant whenever possible throughout
8 the courthouse. Read and familiarize yourself with the Court's
9 COVID-19 health precautions order.

10 We have at least one substantive issue that arose
11 over the weekend to take up before the prospective jurors are
12 called in. I will give everyone the chance to be heard, but
13 let me lay out the issue first.

14 Plaintiffs have filed a letter requesting the Court
15 sever plaintiffs' claims against Mr. Cantwell from their claims
16 against the other defendants in this case for a separate trial
17 pursuant to 42 of the Federal Rules of Civil Procedure. They
18 cite Mr. Cantwell's continuing issue about having his lack of
19 access to documents and proceeding -- and pleadings in this
20 case as a result of his incarceration, including those stated
21 on Friday, as a basis for their request.

22 I have considered plaintiffs' letter. I have also
23 considered Mr. Kolenich's response on behalf of Mr. Kessler and
24 Mr. Damigo and Identity Evropa, which opposes severance. And
25 late last night Defendants Heimbach, Parrott and Traditionalist

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 Worker Party filed in opposition.

2 The Court has been informed Mr. Cantwell has at least
3 read a copy of the plaintiffs' letter on Saturday.

4 Mr. Cantwell, let me first confirm, is that correct?
5 Have you seen the papers?

6 MR. CANTWELL: I have seen the plaintiffs' second
7 letter to Your Honor, and I've also seen Mr. Kolenich's letter.
8 I have not seen Mr. Smith's letter yet.

9 THE COURT: What is your position on this, since
10 you're principally involved?

11 MR. CANTWELL: In brief, I can say I oppose it. I
12 have a prepared statement that I can read, if you like.

13 THE COURT: All right. You may.

14 MR. CANTWELL: The plaintiffs called the Central
15 Virginia Regional Jail on Saturday to summon me to call them.
16 I did so and Mr. Bloch read his amended letter to me out loud,
17 as well as Mr. Kolenich's letter in opposition, and as noted in
18 an accompanying declaration which I intend to give to the clerk
19 before we're done here -- I'll also note -- it's not written
20 down here, but I was delivered copies of each of those letters
21 by the US marshals last night at the CVRJ.

22 I myself had considered filing such a motion, as I
23 disclosed to Mr. Bloch in a subsequent phone call. But as this
24 Court is certainly aware, I ultimately decided against it, as
25 that was not amongst the motions I filed.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 On the one hand, plaintiffs raise a very legitimate
2 point, that their conduct and that of their good friends in the
3 United States government have given me ample grounds for appeal
4 in the unlikely event that they can con 12 registered voters
5 into believing their falsehoods. On the other hand, words and
6 phrases such as "untimely" and "11th hour" seem to have found
7 their way into many of plaintiffs' recent filings. And one is
8 left with the distinct impression that they, to borrow a
9 cliche, cry out in pain as they strike you.

10 I move this Court to sanction the plaintiffs. In
11 April of 2020 --

12 THE COURT: Mr. Cantwell, there's one issue before
13 the Court right now. Nothing else. Do you want to be severed
14 or not?

15 MR. CANTWELL: I do not.

16 THE COURT: Okay. That being said, what is the
17 plaintiffs' position?

18 MS. KAPLAN: Your Honor, may I go to the podium?

19 THE COURT: Yes.

20 MS. KAPLAN: Your Honor, I'll be brief. This is not
21 about any jury questionnaire, juror questionnaires that have
22 come in, as I think Mr. Smith says in his papers. It's not
23 about any newfound empathy for Mr. Cantwell, especially from
24 me, Your Honor. But there does appear -- what prompted us to
25 do this is that there does appear to be an issue with respect

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 to Mr. Cantwell getting pleadings in this case, exhibits in
2 this case, documents in this case. And there are going to be
3 filings throughout the trial in real time.

4 And we proposed what we did because we did not want
5 to complicate an issue in this case with a due process argument
6 by Mr. Cantwell -- not that we agree with that, but one he
7 would surely make. And due process of course does attach to
8 civil litigation.

9 As to the question, Your Honor, as to why we're
10 raising it now, Mr. Cantwell, as Your Honor is well aware, has
11 filed motion after motion after motion about this. Just to
12 give you a couple of examples, ECF 1301, ECF 1303, ECF 1084,
13 ECF 1099, 1162, and 1255.

14 The reason why we've done it just now is because we
15 were here together on Friday for the first time with
16 Mr. Cantwell and we saw with our own eyes how Mr. Cantwell was
17 given documents such as exhibit lists and other things like
18 that and he had never seen them before. That's what prompted
19 us to do this. It's not something we want to do. We're trying
20 to balance two very competing and important values: One,
21 obviously, the need to go forward with this trial, given where
22 we are, given the desire, and I would say, Your Honor, right
23 for our plaintiffs to have this case tried after four years.
24 On the other hand, Mr. Cantwell's legitimate rights to have
25 documents in real time or in as real time as possible as he can

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 to prepare.

2 I think most of it -- I don't want to get involved in
3 the blame game here. You know, obviously there have been
4 problems with the prison system. I think those have been
5 exacerbated by his travel, from what we can see. But that's
6 the only reason we've done this, Your Honor. We were just
7 trying to come up with the best possible solution under the
8 circumstances.

9 I will say that as a matter of law, I believe, if
10 Mr. Cantwell is now saying he does not want severance, we
11 believe that he has then thereby waived any due process
12 argument for appeal.

13 I don't think there's anything further, Your Honor,
14 unless you have questions.

15 THE COURT: Mr. Cantwell, the Court is willing to
16 sever the case and allow you the time you want for your case.
17 I will not continue any other case. We're going forward with
18 this case today as set. I am willing to sever this case as to
19 you.

20 Now, to make it perfectly clear: You're asking the
21 Court not to sever you. You prefer to stay in this case as it
22 is?

23 MR. CANTWELL: Given the choice between those two
24 things, I'll stay in the case as it is. I don't prefer either
25 of those things, but given that binary choice, we'll go

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 forward.

2 THE COURT: Okay. I will deny the motion.

3 Do we have a jury ready yet?

4 THE CLERK: I believe we have the first group.

5 THE COURT: Let me see if I need to read anything
6 first.

7 MR. CANTWELL: May I please hand some documents to
8 the clerk to be added to the record?

9 THE COURT: You may.

10 MS. KAPLAN: Would it be possible if we could just
11 look at them before the Court gets them so we don't have to
12 wait?

13 THE COURT: Excuse me.

14 MS. KAPLAN: I apologize, Your Honor.

15 THE COURT: Go ahead.

16 MS. KAPLAN: I was just wondering if we could see
17 Mr. Cantwell's filings before they file them, because there's
18 always a delay. Just if we could just glance at them very
19 quickly.

20 THE COURT: Well, the clerk -- you may look at them
21 now.

22 MS. KAPLAN: May I approach, Your Honor?

23 THE COURT: You may, yes.

24 (Pause.)

25 We're going to have a couple of minutes before the

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 jury comes in. Are there any other issues that we need to take
2 up at this time?

3 MS. DUNN: Nothing from the plaintiffs, Your Honor.

4 THE COURT: Heidi, I'm wondering, should we take a
5 break?

6 THE CLERK: Yes. Do you mind if we take a break?

7 THE COURT: I don't want to have the jury coming --

8 THE CLERK: I think that would be a good idea, if we
9 take a quick break. I think we have some audio problems, too.

10 THE COURT: We're going to just be in recess a few
11 minutes until the jury comes. Don't go far. I want everyone
12 in the courtroom when the jury arrives.

13 (Recess.)

14 THE COURT: These are questionnaires that -- some of
15 the jurors who did not file them earlier filled them out this
16 morning.

17 THE CLERK: Actually, we did not have any more. One
18 gentleman who did not have a questionnaire, he did say he
19 filled one out and would not fill out one when he came in
20 today, but we don't appear to have it.

21 THE COURT: Okay.

22 THE CLERK: That's Number 158.

23 THE COURT: All right. While that's going on, I'm
24 going to just tell you all the Court intends to inform the
25 panel as a whole about the COVID-19 health precautions the

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 Court has taken so that the list of measures doesn't need to be
2 repeated dozens of times. To be clear, the Court will
3 separately take up specific questions regarding COVID-19 issues
4 on an individual basis.

5 Counsel from both sides should be aware at this point
6 that the Court will ask counsel representing parties to state
7 the names of their prospective witnesses to see if any members
8 of the panel knows any of the prospective witnesses. I'll
9 start with plaintiff and then defense counsel.

10 Mr. Spencer, if you have any witness list I will ask
11 you to read the name of that list, too. If you don't have such
12 a list, that's fine.

13 I want to be clear about this: While the Court will
14 be asking counsel and *pro se* defendants to read their witness
15 list, then if any prospective juror says they know any of your
16 witnesses, the Court will conduct any follow-up. This won't be
17 a time for making any statements. The Court simply needs
18 counsel to read their prospective witnesses. That's about the
19 extent of the collective voir dire.

20 Then the Court intends to individually examine each
21 prospective juror. The jurors will be called in one at a time.
22 Prospective jurors will only be identified by their juror
23 number, not name. During the jury selection process, the Court
24 is conducting the questioning itself. Again, counsel and the
25 parties will not be addressing the prospective jurors directly.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 After the Court has finished any questions it may
2 have, the parties may submit questions for the Court. For some
3 prospective jurors, the Court may have a number of questions;
4 for others, few. Those in the courtroom may submit any further
5 requested questions in paper form, but put your name and who
6 you represent on the paper and hand the questions in on this
7 side. The plaintiffs hand it to the marshal, and over here,
8 you can hand it to one of the clerks on the end and they'll
9 pass it up to me. I may or may not ask the question.

10 If there are *pro se* defendants or defense counsel who
11 could not be present in the courtroom, the Court will ask if
12 there are any other questions for prospective jurors by such
13 persons on Zoom. If you do, please identify yourself and say
14 you wish to submit a question to the Court for the Court's
15 consideration. Do not say the question. Just flag that you
16 have one. The Court will direct the prospective juror leave
17 the courtroom -- the Court may direct the prospective juror to
18 leave the courtroom temporarily and we'll alert you when you
19 may pose your question. For those on Zoom, you may also flag
20 or message Ms. Moody, the clerk, if you have questions. She
21 will alert the Court that you have a question.

22 Remember, jurors are referred to by juror number.
23 See this Court's order of October 12, 2021, Docket 1204. Given
24 the highly unlikely event that discussion of personal
25 identifying information about the prospective juror must be

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 addressed, you must flag that fact for the Court, but do not
2 divulge anything else. The Court will address the relevant
3 inquiry in a sealed format only accessible to the parties and
4 counsel of record.

5 After the Court finishes conducting individual voir
6 dire with each of the prospective jurors for the first panel,
7 the Court will then, outside the presence of the jurors, take
8 up strikes for cause for any members of the first panel. The
9 Court will go down the list of prospective jurors, ask if there
10 are any asserted strikes for cause. If the Court will -- hears
11 none for an individual juror, the Court will proceed to the
12 next prospective juror. If the Court hears an asserted strike
13 for cause, that party so states succinctly the basis therefor,
14 both the grounds for strike and any objectionable answer in the
15 question they have in voir dire. Then the Court will hear any
16 opposition to the strike and then make a ruling.

17 Upon conclusion of the strikes for cause for the
18 panel, the Court will then go through the peremptory strikes
19 procedure discussed at the final pretrial conference.

20 All right. We can bring the jury in now.

21 MR. STABILE: Your Honor, first let me introduce
22 myself. I'm Renato Stabile. Your Honor just granted my
23 pro hac vice application. I'm going to be assisting the
24 plaintiffs with jury selection. So thank you for having me.
25 But just one housekeeping matter, if I may.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Take your mask down.

2 MR. STABILE: One housekeeping matter, if I may, Your
3 Honor. I'm sure, as Your Honor appreciates in reviewing the
4 questionnaires, some jurors have particularly strong views
5 about the issues in this case, sometimes even parties that are
6 involved in this case. When it comes to the potential
7 follow-up questions about those types of more sensitive issues,
8 I'm just inquiring as to the procedure for if we believe the
9 juror should not be questioned in front of everybody else.

10 THE COURT: Well, no juror is going to be
11 individually questioned in front of everybody else. The jurors
12 will be brought in and sit in the jury box individually.

13 MR. STABILE: But if a juror is uncomfortable
14 speaking about a particular issue, I'm just inquiring as to
15 what the procedure will be if they ask to discuss --

16 THE COURT: Well, if they're uncomfortable, they're
17 uncomfortable. I mean, if they refuse to answer, we'll deal
18 with that, but I don't know how to make people comfortable.

19 MR. STABILE: Well, the suggestion from the
20 plaintiffs would be that we do question jurors individually
21 when it comes to --

22 THE COURT: Well, that's what I just said we're going
23 to do.

24 MR. STABILE: Oh, okay. I'm sorry. I misunderstood.

25 THE COURT: That's why I take my mask off. I hope

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 I'm clearer. Maybe I need to put it back on.

2 When we get to the individual juror questioning, I'm
3 going to have my judicial assistant come up and hand me the
4 papers for that particular juror so I won't be fumbling through
5 everything.

6 MR. STABILE: Your Honor, can we flag for you
7 questions that we believe are sensitive and require --

8 THE COURT: Right. And you can pass them up before
9 the jury gets here, if you have them.

10 MR. STABILE: Thank you.

11 **(Jury in, 10:01 a.m.)**

12 THE CLERK: Dan, are they bringing them in and
13 seating them by number? I don't think they are.

14 THE COURT: The jurors should be seated by number.

15 THE CLERK: Mo, they need to be seated by their
16 number.

17 THE COURT: Are the numbers in order?

18 THE CLERK: Yes, by their badge number. So 150
19 should be in the front left corner. 150 up front, then 151.

20 THE COURT: The clerk will let you know where your
21 seat is.

22 All right. The clerk will call the jury.

23 THE CLERK: Ladies and gentlemen, this is Civil
24 Action Number 3:17-cv-00072, Elizabeth Sines and others versus
25 Jason Kessler and others.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 I'm now going to call the roll, which we basically
2 just did. But as I call your number, please stand and remain
3 standing until I call the next number.

4 150, 151 -- you can sit back down, sir -- 153, 158,
5 159, 160, 164, 166, 168, 172, 176, and 177.

6 Thank you. And once again, ladies and gentlemen -- I
7 do apologize -- if you would please stand and be sworn.

8 Please raise your hands.

9 Do you and each of you solemnly swear that you will
10 make true questions to such -- true answers to such questions
11 as may be propounded to you testing your qualifications to
12 serve as a juror in this Court?

13 You do?

14 You may be seated.

15 Ladies and gentlemen, in order to serve as a juror in
16 this Court, you must be a citizen of the United States who has
17 attained the age of 18 years and has resided in the Western
18 District of Virginia for one year. You must not be under
19 charge or have been convicted in any court, state or federal,
20 of a crime punishable by imprisonment for a period of more than
21 one year, unless your civil rights have been restored. You
22 must be able to read, write, and understand the English
23 language and must be able, both physically and mentally, to
24 render efficient jury service. Do you and each of you qualify
25 on these grounds?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 You do.

2 I will now ask you several questions concerning the
3 case which is to be tried today for the purpose of ascertaining
4 whether you can hear the facts fairly and impartially and
5 render a just verdict.

6 The plaintiffs in this case are Elizabeth Sines, Seth
7 Wispelwey, Marissa Blair, April Muniz, Marcus Martin, John Doe,
8 Natalie Romero, Chelsea Alvarado, and Thomas Baker. The
9 plaintiffs are represented by counsel, seated to my right.

10 Counsel will now identify themselves by name and firm
11 for the record.

12 MS. DUNN: Good morning. Karen Dunn from Paul Weiss
13 for the plaintiffs.

14 MR. STABILE: Good morning. Renato Stabile for the
15 plaintiffs.

16 THE CLERK: Counsel, could you also identify the city
17 that you're --

18 MR. STABILE: Oh. New York.

19 MS. DUNN: Apologies. Karen Dunn from Chevy Chase,
20 Maryland.

21 MR. ISAACSON: Bill Isaacson from Washington, D.C.

22 MS. KAPLAN: Roberta Kaplan for the plaintiffs from
23 Kaplan Hecker & Fink from New York City.

24 MR. MILLS: David Mills, Cooley. I'm in Bethesda,
25 Maryland.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MR. LEVINE: Alan Levine from Cooley, from New York
2 City.

3 MS. PHILLIPS: Jessica Phillips from Paul Weiss,
4 Arlington, Virginia.

5 MR. BLOCH: Michael Bloch from Kaplan Hecker & Fink,
6 New York City.

7 MS. HONIG: Faye Honig, New York City.

8 THE CLERK: The defendants in this case are Jason
9 Kessler, Richard Spencer, Christopher Cantwell, James Alex
10 Fields, Jr., Vanguard America, Andrew Anglin, Moonbase
11 Holdings, LLC, Robert "Azzmador" Ray, Nathan Damigo, Elliott
12 Kline, Identity Evropa, Matthew Heimbach, Matthew Parrott,
13 Traditionalist Worker Party, Michael Hill, Michael Tubbs,
14 League of the South, Jeff Schoep, National Socialist Movement,
15 Nationalist Front, Augustus Sol Invictus, Fraternal Order of
16 the Alt-Knights, Loyal White Knights of the Ku Klux Klan, and
17 East Coast Knights of the Ku Klux Klan.

18 Defendants are appearing both with counsel or on
19 their own behalf. They are seated to my left or appearing by
20 Zoom.

21 Counsel and defendants will now identify themselves
22 for the record.

23 MR. KOLENICH: Jim Kolenich, Kolenich Law Office,
24 Cincinnati, Ohio.

25 THE CLERK: And who are you representing,

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 Mr. Kolenich?

2 MR. KOLENICH: Representing Jason Kessler, Nathan
3 Damigo, and Identity Evropa.

4 MR. SPENCER: I am Richard Spencer. I am on my own
5 behalf, and I am from Whitefish, Montana.

6 MR. SMITH: Joshua Smith, Smith LLC, Pittsburgh,
7 Pennsylvania. I represent David Matthew Parrott, Matthew
8 Heimbach, and the Traditionalist Worker Party.

9 MR. JONES: Bryan Jones, Charlottesville, Virginia.
10 I represent Michael Hill, Michael Tubbs, and the League of the
11 South.

12 MR. CAMPBELL: David Campbell. I represent James
13 Fields. From Richmond, Virginia.

14 MR. REBROOK: Edward ReBrook of Burke, Virginia. I
15 represent the National Socialist Movement, Jeff Schoep, and the
16 Nationalist Front, although I don't know if that's still a
17 thing.

18 MR. CANTWELL: My name is Christopher Cantwell. I'm
19 proceeding *pro se*.

20 THE CLERK: The purpose of my mentioning this is to
21 ask each of you whether you are related by blood or marriage to
22 the plaintiffs, defendants, or any of the attorneys in this
23 action. If you are, please state so to the judge.

24 You are not.

25 Your Honor, do you have additional questions?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Yes.

2 Members of the jury, as you know, everyone is
3 required to keep their mask on in court, except if you're
4 speaking. And I'm removing my mask. Hopefully it will be
5 better to understand me and anyone else. If you have to speak,
6 you may remove your mask while speaking, and the attorneys and
7 other parties may also.

8 Before I ask any further questions, I want to just
9 say -- give you a statement about the steps the Court has
10 taken, and is taking, to minimize the risk of the spread of
11 COVID-19.

12 First, the Standing Orders of this Court require
13 everyone to wear a mask that covers their nose and mouth while
14 in public areas in the courthouse, unless a court official
15 specifically directs otherwise. That applies to everyone,
16 whether vaccinated or unvaccinated.

17 Second, access to the courthouse has been limited to
18 persons involved in this case. That includes court staff,
19 litigants, attorneys, witnesses, and limited media.

20 Third, the Court has ordered all persons in the
21 courtroom to practice social distancing, except counsel,
22 litigants, and court staff.

23 Fourth, pursuant to the Court's Standing Orders, all
24 court employees, including judges, chambers staff, and staff of
25 the clerk's office, must either be vaccinated or conduct a

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 COVID-19 test at least weekly.

2 Fifth, this Court has specifically ordered all
3 litigants, lawyers, witnesses, and court staff in this case to
4 attest before coming into the courthouse that they are either
5 vaccinated or have tested negative within three days of their
6 appearance. They will have a continuing duty to do so
7 throughout the trial, if they are appearing based on negative
8 COVID tests. If there are any witnesses, parties, or attorneys
9 who can't meet those rules, they will testify by Zoom.

10 Sixth, the Court has ordered extra cleaning of touch
11 points, frequently touched surfaces, and bathrooms during this
12 trial.

13 And lastly, specifically for jurors, the Court will
14 require all jurors, of which the Court expects there will be
15 12, to always be masked. Jurors will also be socially
16 distanced in the gallery, as you are now.

17 I really believe that, probably, during this trial,
18 you will be as safe as you would be anywhere else in the
19 community from having a problem with the COVID-19 virus. I
20 know we are being much more careful than if one shops or
21 attends church or other events in the community. They would be
22 much safer here than about anywhere else.

23 Before we begin the process of juror selection, I
24 will give you a general overview of this case so you know what
25 it is about and can better answer my questions.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 This is a civil lawsuit brought by a number of
2 plaintiffs against a number of defendants, including
3 individuals and organizations, based on events that occurred in
4 Charlottesville, Virginia in August 2017. The plaintiffs in
5 this case claim the defendants and others conspired to commit
6 racially motivated violence at an event the defendants called
7 Unite the Right, which was held in Charlottesville on August 11
8 and 12, 2017.

9 Plaintiffs allege that the defendants helped to plan,
10 promote, and carry out racially motivated violent acts during
11 that event, and in so doing, caused plaintiffs' physical,
12 emotional, and monetary harm. Such acts include a torch march
13 on August 11 and various alleged acts of violence on August 12,
14 including a car attack that -- a car that drove through a large
15 crowd of people, injuring seven of the nine plaintiffs in this
16 case.

17 Defendants deny that they conspired with anyone to
18 commit any violence or that they are responsible for any injury
19 or damages suffered by plaintiffs.

20 If you are selected as a juror in this case, you will
21 be asked to decide whether the plaintiffs proved that the
22 defendants engaged in a conspiracy to commit racially violence
23 and harm plaintiffs as a result.

24 Plaintiffs have also asserted under federal -- other
25 federal and state law claims against the defendants. Later, I

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 will explain the elements of each of the plaintiffs' claims in
2 greater detail to those of you who serve on the jury.

3 It is estimated that this case will last four weeks,
4 including this week. The trial will take place from Monday
5 through Friday, with the final scheduled date being Friday,
6 November 19. Court will start at 9 o'clock, and it's my custom
7 to do everything in my power to stop by 5:00 each day so that
8 you will know -- you can count on when you'll be leaving and
9 getting home.

10 The clerk has asked you some questions concerning
11 your potential service as jurors in this case. This process of
12 questioning jurors is referred to as voir dire. There are
13 several questions -- reasons for these questions.

14 First, it may be that, although otherwise qualified,
15 some of you may not be eligible to sit in this particular case
16 for any variety of reasons. We need to ask questions to
17 determine your eligibility.

18 Also, under the rules that govern jury selection in
19 this Court and others, the parties play a role in choosing the
20 jury that is to try their case. That is why we have more of
21 you here than we really need to sit on the jury: Under the
22 rules, the parties are entitled to take strikes to eliminate
23 persons from the jury panel, and then the remaining jurors will
24 hear the case. The parties need to know more about you in
25 order to make intelligent decisions about who to strike.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 The Court will be conducting jury selection in the
2 following manner: The Court will ask some general questions.
3 The Court will call each prospective juror for any specific
4 follow-up questions, if any, the Court may have. Throughout
5 this process, the clerk and Court will only refer to you by
6 juror number, not your name. This step -- this is a step we
7 sometimes take for the sake of our prospective jurors and
8 jurors' privacy.

9 We need to ask questions to determine your
10 eligibility. So if you could, at any time you're called on, do
11 not state your name, but state your number.

12 For these preliminary questions, if the Court asks
13 you a question and you have a response to the question asked,
14 please raise your hand and you will be called on. So if the
15 Court asks you: "Are you here today to be considered to serve
16 as a juror in the case," you would all raise your hand. If you
17 feel your answer to any question is particularly personal in
18 nature, you may ask to speak to me and the attorneys privately;
19 however, just so you are aware, for the most part I do plan to
20 mostly conduct specific questions with each prospective juror
21 individually, without other prospective jurors in the
22 courtroom. In a minute, you will all return to your jury area
23 and then each juror will come in separately, and we will
24 proceed with the questions.

25 Now we will begin the process of selecting a jury to

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 hear this case. You have heard the clerk read the names of the
2 plaintiffs and the plaintiffs' counsel in the courtroom,
3 introduce themselves. At this time I will ask plaintiffs'
4 counsel to state the names of any new counsel who entered an
5 appearance in this case since the Court circulated the jury
6 questionnaire. I think everyone has been...

7 MS. DUNN: I believe so, Your Honor.

8 THE COURT: Anyone on the defense side new to the
9 case?

10 MR. KOLENICH: No, sir.

11 THE COURT: Okay. Now that all -- you've heard all
12 the names -- and the clerk asked you this too -- but you've
13 heard the names of the defendants, the plaintiffs, and the
14 attorneys. Do any of you recognize or know now any of those
15 persons named? If so, please raise your hand.

16 Yes, sir? Your jury number?

17 MALE JUROR: 153.

18 THE COURT: And whom do you know?

19 MALE JUROR: From news outlets and stuff like that, I
20 mean, I pretty much know a little bit about everybody.

21 THE COURT: Well, do you know any of the persons?
22 I'm not asking you about the events, but do you know the
23 persons personally?

24 MALE JUROR: Personally, no.

25 THE COURT: Okay.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 We'll follow up later about anything else you might
2 know.

3 I'll ask plaintiff to read your witness list. This
4 is a long list. So listen carefully. And if you know anyone's
5 name, I'm going to ask you at the end of reading the list if
6 you recognize any name.

7 You may proceed.

8 MS. DUNN: Thank you, Your Honor.

9 Chelsea Alvarado, Jessica Alvarado, Thomas Baker,
10 Marissa Blair, Julie Convisser, Diane D'Costa, Stephen Fenton,
11 Allen Groves, Deborah Lipstadt, Marcus Martin, April Muñiz,
12 Sharon Reavis, Natalie Romero, Peter Simi, Elizabeth Sines,
13 Devin Willis, Seth Wispelwey, Nadia Webb, and David Weiss.

14 Your Honor, that's the list of live witnesses. There
15 is also deposition testimony. Would you like me to proceed?

16 THE COURT: Yes.

17 MS. DUNN: Erica Alduino, Robert "Ike" Baker, Patrick
18 Casey, Michael Chesny, Burt Colucci, Ben Daley, Shane Duffy,
19 Samantha Froelich, Bradley Griffin, Dillon Hopper, Vasilios
20 Pistolis, and Thomas Rousseau. Andrea Roberts, Angela Tabler.
21 That's all, Your Honor.

22 THE COURT: Members of the jury, do you recognize the
23 names of any of those persons as someone you know? If so,
24 please raise your hand.

25 All right. Mr. Campbell, do you have any witnesses?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MR. CAMPBELL: Not other than have already been
2 mentioned, Your Honor. Thank you.

3 THE COURT: Do any of the counsel for any of the
4 defendants have any witnesses they wish to -- that were not on
5 the list read by plaintiff?

6 MR. KOLENICH: No, Your Honor.

7 MR. SMITH: No, Your Honor.

8 MR. KOLENICH: I have one, Your Honor.

9 THE COURT: Yes.

10 MR. KOLENICH: Wesley Bellamy.

11 MR. JONES: Your Honor, I'll read two, if that's
12 okay.

13 THE COURT: Yes.

14 MR. JONES: Richard Hamblin and Charlottesville
15 Police Department Sergeant William Newberry.

16 THE COURT: Do any of you know any of those persons?

17 MR. CANTWELL: Judge, I don't have my witness list.

18 THE COURT: Who's speaking?

19 MR. CANTWELL: It's Christopher Cantwell, *pro se*. I
20 don't have my witness list.

21 THE COURT: Okay. From here on out, the Court will
22 conduct the further examination of the jurors here in the
23 courtroom individually. So I'll ask you to go with the marshal
24 at this time back to the jury assembly area that you came into.
25 And when you come -- are brought back, of course, take the seat

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 that you are sitting in at this time.

2 All right. Which juror? Is this number 1?

3 MR. STABILE: Your Honor, if I may, we just
4 checked --

5 THE COURT: Take your mask down.

6 MR. STABILE: We just checked our questionnaires
7 against the juror list we were provided. We do not have
8 questionnaires for juror 158, 168 and 176.

9 THE CLERK: 158 was the juror who said he had
10 previously supplied it and would not fill one out when he came
11 in today. They have searched and we do not have a record of
12 having received one from him.

13 MR. STABILE: That would leave 168 and 176 we don't
14 have a questionnaire.

15 THE COURT: Are they the two that we did not have?
16 158 and --

17 THE CLERK: What was it?

18 MR. STABILE: 168 and 176.

19 MR. SMITH: You said 158 and 176?

20 MR. SPENCER: I have the exact same problem.

21 THE COURT: Well, Heidi, which ones do we know we
22 don't have questionnaires --

23 THE CLERK: The one we knew we did not have is 158.
24 I'll reach out to the office and see if they have any record of
25 the other two.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: In the meantime, call in the first juror.

2 What's the first?

3 THE CLERK: 150.

4 THE COURT: All right. Bring in Juror Number 150.

5 Are the jurors back here?

6 They are assembled still across the hall? Okay.

7 Sir, come on up.

8 THE CLERK: I'm told we have one for 168. I'm asking
9 for it. And I'm asking to see if we can get 176 filled out.

10 THE COURT: All right, sir. Thank you. Thank you
11 for being here. You heard me state that this case is going to
12 last for four weeks, starting today. Recognizing the not
13 insubstantial burden this case would place on you or any other
14 juror, but recognizing jury service is a vital civic duty, does
15 this timing pose a particular problem for you that it wouldn't
16 for most people?

17 MALE JUROR: I work on a farm. My wife works at
18 home, and I think this is going to cause her a lot more work,
19 but that's the way it goes.

20 THE COURT: Right. Thank you. You've also expressed
21 some concern about COVID, which all of us have.

22 MALE JUROR: I'm sorry, about what?

23 THE COURT: You've expressed concern about the COVID
24 issues, which all of us have. You've heard what we are trying
25 to do regarding COVID. Would you be comfortable regarding

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 COVID, knowing that the Court has taken the steps it has taken
2 to mitigate any problems?

3 MALE JUROR: I think you've done a fine job. I don't
4 have a concern with COVID.

5 THE COURT: You do not. Okay. Thank you.

6 MALE JUROR: I apologize. I have profound hearing
7 loss. It's difficult to understand you.

8 THE COURT: Do you have any physical or medical
9 limitations that would prevent you from serving on a jury?

10 MALE JUROR: No, sir.

11 THE COURT: I noticed you seem to have maybe a
12 hearing problem. Can you hear with that device okay?

13 MALE JUROR: It's one extreme or the other.

14 THE COURT: All right. You also expressed an opinion
15 in questions 42 through 44 concerning your feelings about some
16 of the parties to the case. Now, you recognize if you are
17 called as a juror in the case you're going to have to say that
18 you can be fair, you can consider the issues in the case and
19 decide the case based solely on the evidence in the case and
20 the law as the Court instructs you.

21 Are you going to be able to set aside any
22 preconceived bias or feelings about any of the parties to the
23 case and be able to decide the case solely on the law and the
24 evidence, and render a verdict fair to both the defendant and
25 the plaintiffs in the case?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: I'd like to think that I could. I'm
2 fairly aware of what's been going on. I read the papers. I'm
3 a news junkie. I am fairly opinionated. I'd like to think
4 that I could separate it, though.

5 THE COURT: All right.

6 MALE JUROR: If you have initial core beliefs in
7 something, it's kind of hard to change your opinion, but that's
8 what you do. So...

9 THE COURT: Do you recall seeing or hearing anything
10 in recent news or stories about Unite the Right, the rally, as
11 in the past year?

12 MALE JUROR: I'm sorry, have I heard something new in
13 the last year?

14 THE COURT: Yes.

15 MALE JUROR: There's so many people involved in this
16 thing. It keeps revolving. I don't think there's anything new
17 that's coming up. We've been just waiting and waiting for this
18 day to show up, I think. I know that a couple of the people
19 involved have been reluctant to show up and they've been held
20 in contempt for not doing so. Any other questions? I'm sorry.

21 THE COURT: Okay. That's fine. Thank you.

22 Any other matters?

23 Excuse me. Any questions that are going to be handed
24 up? Is anyone writing down a question?

25 MR. STABILE: No questions from plaintiffs, Your

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 Honor.

2 MR. KOLENICH: Your Honor, we have one or two
3 questions.

4 THE COURT: All right. If you would write them down,
5 please.

6 All right. Put the name of the person you're
7 representing on the questions.

8 Okay. I'll ask you: You said, I believe, we have
9 been waiting for this day. What do you mean by that?

10 MALE JUROR: This whole town was turned on its head
11 by this whole affair. You can't avoid it. Look at what's
12 happened in the last couple of years, up to as recently as the
13 statue removals.

14 THE COURT: Okay: You can take your mask down.

15 MALE JUROR: Excuse me?

16 THE COURT: Take your mask down. I was asking you
17 what you meant by that particular statement that we've been
18 waiting -- we've been waiting for this -- we have been waiting
19 for this day?

20 MALE JUROR: I think as a community we want to get it
21 behind us and see justice done.

22 THE COURT: Thank you. I understand.

23 In your questionnaire you stated that -- in answer to
24 72 -- that you would not be able to set aside -- well, the
25 question was: Would you be able to set aside preconceived

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 opinions, if any, you may have about the Unite the Right
2 rally? -- this case is about the parties therein -- and reach a
3 conclusion based solely on the evidence you hear at trial in
4 accordance with the law as instructed by the Court? And you
5 answered "no" at that time, and stated that "these people are
6 terrorists." Do you think you can set aside that opinion?

7 MALE JUROR: I'm sorry, but I don't think I can.

8 THE COURT: Okay. Thank you. Thank you. You may go
9 back to the jury room.

10 All right. Who's next?

11 THE CLERK: 151.

12 THE COURT: We need juror 151. Go out there and get
13 151.

14 I intend to strike 151 for cause.

15 THE CLERK: 150?

16 THE COURT: I'm sorry, 150. The gentleman who was
17 just here.

18 Good morning. Thank you for coming back in. Would
19 you state your jury number?

20 FEMALE JUROR: 151.

21 THE COURT: All right. You heard me state that this
22 case is set for trial for four weeks, starting today. Now,
23 recognizing that jury service is a vital civic duty, does this
24 timing pose a particular problem for you that you could not
25 serve for the four weeks?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 FEMALE JUROR: I think I can do it.

2 THE COURT: All right. Thank you. There may be
3 times during the trial you will be sitting for as much as an
4 hour or an hour and a half or longer without a break. Do you
5 have any physical or medical limitation that would prevent you
6 from doing so?

7 FEMALE JUROR: I have some health issues, but I think
8 I can get through it.

9 THE COURT: All right. Thank you. Do you know of
10 any reason you could not serve as a juror in this case and
11 render a verdict fair to both the plaintiffs and the
12 defendants?

13 FEMALE JUROR: No.

14 THE COURT: All right. Are there any -- going to be
15 any questions passed up?

16 MR. KOLENICH: I will.

17 THE COURT: Are we getting any questions back?

18 MR. KOLENICH: Yes, Your Honor.

19 THE COURT: You stated in an answer in your
20 questionnaire that white supremacists and racists came to
21 Charlottesville and -- I'm not sure I can read that -- on
22 August 2017. Do you understand that in this case that the
23 plaintiffs are claiming that the defendants were racially
24 motivated and conspired to come to Charlottesville and cause
25 damage or injury? Can you set aside any opinion you might have

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 and decide whether the individual defendants conspired to do so
2 based on the law and the evidence you hear in the courtroom,
3 and set aside any preconceived notion you might have from what
4 you heard, read, or saw before today?

5 FEMALE JUROR: Yes, I can set aside that -- what you
6 explained.

7 THE COURT: All right. Do you have any concerns of
8 any repercussions that might come to you if someone were to
9 know that you were on the jury and decided the case a certain
10 way?

11 FEMALE JUROR: No.

12 THE COURT: Do you have any belief or have any
13 opinion already that the defendants are racists and white
14 supremacists?

15 FEMALE JUROR: No opinion.

16 THE COURT: And do you blame the defendants in this
17 case for the events of August 11 and 12 in 2017?

18 FEMALE JUROR: No.

19 THE COURT: Okay. Thank you. All right. Thank you
20 very much, and I'll let you -- if you would go with the
21 marshal.

22 I'd like to -- I'd ask the jurors, when you're back
23 with other jurors, do not discuss anything that was said in the
24 courtroom, or do not discuss anything about the case.

25 Which juror is next?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE CLERK: 153.

2 THE COURT: 153.

3 MS. DUNN: Your Honor?

4 THE COURT: Yes.

5 MS. DUNN: Before the next juror is brought in, may
6 we ask a question?

7 THE COURT: Yes.

8 MS. DUNN: One of the questions you asked is about
9 repercussions against the jurors if they decide the case in a
10 certain way. First of all, I'm not --

11 THE COURT: That was a prompted question.

12 Come on up here, sir, if you would.

13 All right, sir. Would you state your number as a
14 juror?

15 MALE JUROR: 153.

16 THE COURT: All right. You heard me state that this
17 case is set for trial for four weeks starting today.
18 Recognizing that jury service is a vital civic duty, does this
19 timing pose a particular problem for you beyond what it would
20 for anyone else who might be called to jury service?

21 MALE JUROR: Yes, sir.

22 THE COURT: All right. Can you explain that?

23 MALE JUROR: I run my own business. So taking off
24 for four weeks would be pretty hard for me.

25 THE COURT: What type of business are you in?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: Lawn care.

2 THE COURT: Do you have anyone working for you?

3 MALE JUROR: No. It's a one-man show.

4 THE COURT: Does your family have other income?

5 MALE JUROR: No, sir.

6 THE COURT: Would you -- would it be a real financial
7 hardship on you if you had to serve for this time?

8 MALE JUROR: Yes, sir.

9 THE COURT: Are you telling me that the business
10 would either close down or otherwise cease to function if you
11 were on the jury?

12 MALE JUROR: Yeah, because I'd only be able to work
13 on the weekends, so I'd be backed up like crazy.

14 THE COURT: Okay. Any questions?

15 MR. KOLENICH: No, Your Honor.

16 THE COURT: Any from your side?

17 MS. DUNN: Your Honor, we may have a couple of
18 questions.

19 THE COURT: In your questionnaire you stated that you
20 could not abide by the Court's rule about wearing a mask. Is
21 there any particular medical problem you have?

22 MALE JUROR: I'm asthmatic.

23 THE COURT: You're what?

24 MALE JUROR: Asthmatic.

25 THE COURT: Okay. And you said in Question 72 that

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 you would not be able to decide this case based on the
2 evidence, and that you could not follow the law.

3 MALE JUROR: What's that, now?

4 THE COURT: Okay. Let me read the question to you.

5 The question was: "Would you be able to set aside
6 preconceived opinions, if any, you may have about the Unite the
7 Right rally, this case, and the parties therein, and reach a
8 decision based solely on the evidence you hear at trial in
9 accordance with the law as instructed by the Court?"

10 And you answered that question: "No."

11 MALE JUROR: Right. I have opinions on the matter,
12 yeah. I'm not sure that, you know, I could be convinced
13 otherwise, but that's...

14 THE COURT: All right. But are you able to state
15 that you could approach this case with an open mind, and, if
16 the plaintiffs do not prove whatever your preconceived notion
17 is and you hear the law of the case, could you try the case on
18 what you hear in the courtroom?

19 MALE JUROR: Yes, that's possible, yes.

20 THE COURT: And would you follow the law as the judge
21 instructs you?

22 MALE JUROR: Yes, sir.

23 THE COURT: Okay. Any other questions? Anything
24 from -- all right, sir. I'm going to ask you to go back and go
25 with the marshal. When you get with the other jurors, do not

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 discuss anything about --

2 MALE JUROR: Okay.

3 THE COURT: -- the case or what went on in the
4 courtroom.

5 MALE JUROR: Okay.

6 THE CLERK: 158.

7 MR. STABILE: Your Honor, before 158 comes in, this
8 is the juror for whom we don't have a questionnaire. Is Your
9 Honor going to ask him the questions on the questionnaire?

10 THE COURT: Well, we're going to have to ask him a
11 lot of questions, I guess.

12 Is he the one that said he filled one out?

13 THE CLERK: Correct. And they asked him to fill
14 another one out and he did not want to fill out another one.
15 Dylan could not find one.

16 (Pause.)

17 THE COURT: State your juror number.

18 MALE JUROR: 158.

19 THE COURT: All right. You heard me state that this
20 case is set for trial for four weeks starting today.
21 Recognizing that jury service is a vital civic duty, does that
22 much time pose a particular problem for you that wouldn't be a
23 problem for anyone else who might be called for jury service?

24 MALE JUROR: It would be a very serious problem for
25 me.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: It would be what?

2 MALE JUROR: I said it would be a very serious
3 problem for me.

4 THE COURT: Please, if you don't mind, drop your
5 mask.

6 MALE JUROR: Okay. Yes, sir.

7 I said it would be a very serious problem for me.

8 THE COURT: All right. Can you tell -- we did not
9 receive a questionnaire from you. So I'll have to ask you --
10 we don't know that much about you. So we'll have to ask you
11 more questions.

12 MALE JUROR: Yes, sir. They asked me -- I sent that
13 questionnaire in, but it was late.

14 I'm a heart patient, triple bypass heart patient, and
15 I take medication that it just -- it makes me drowsy.

16 THE COURT: What is your age?

17 MALE JUROR: I'm 74.

18 THE COURT: 74.

19 Do you -- Heidi?

20 Anyone who's 74 does not have to serve on this jury
21 if you choose not to.

22 MALE JUROR: Well, I choose not to. I didn't know.

23 THE COURT: Okay.

24 MALE JUROR: I just knew I had to report.

25 THE COURT: All right. I'm going to excuse you,

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 then.

2 MALE JUROR: Okay. Thank you.

3 THE COURT: Sir, I'm going to let you leave. You
4 don't need to stay here any longer.

5 Which is the next number?

6 THE CLERK: 159.

7 MS. DUNN: Your Honor, prior to Juror 159, may I just
8 finish?

9 THE COURT: Yeah, before the juror comes in, let her
10 finish.

11 Go ahead.

12 MS. DUNN: Thank you, Your Honor.

13 You were submitted a question which asked the juror
14 whether, if they decided the case a certain way, they would
15 fear repercussions. I don't mean to restate the question; I
16 just don't have the verbatim transcript in front of me, so if
17 you want to repeat what the question was --

18 MR. SMITH: I can read the question, if you like.

19 THE COURT: Wait. Look. Now, don't talk to each
20 other. No colloquy.

21 MS. DUNN: Our concern, Your Honor --

22 THE COURT: Talk to the Court. You'll get your
23 chance.

24 MR. SMITH: I understand, Judge. Sorry about that.

25 THE COURT: Go ahead.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MS. DUNN: Our concern, Your Honor, is asking jurors
2 if they fear repercussion if they decide the case a certain way
3 may be experienced by the jury as threatening or potentially
4 retaliatory. Your Honor plans to empanel an anonymous jury
5 specifically to make jurors not feel that way. So we just --
6 if a question like that is to be asked, we'd ask to discuss it
7 ahead of time.

8 THE COURT: Okay.

9 MS. DUNN: Thank you, Your Honor.

10 THE COURT: I would not normally ask that question
11 unless a specific juror -- is that -- I know one juror stated
12 that she was worried. Is that the juror?

13 MR. SMITH: I don't believe that was the juror, Your
14 Honor. That was just sort of a question that came to mind with
15 this particular juror. It wasn't sort of a general question.
16 There was that one, Your Honor --

17 THE COURT: I may not ask the question of every...

18 MS. DUNN: Thank you, Your Honor.

19 THE COURT: All right. You may have a seat.

20 All right. Would you state your jury number, please?

21 FEMALE JUROR: 159.

22 THE COURT: All right. And you heard me say that
23 this case is set to be tried for the next four weeks, starting
24 today. Now, recognizing that jury service is a vital civic
25 duty, does the timing pose a particular problem for you that

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 wouldn't be common for almost anyone who would serve on a jury?
2 I mean, would it be a real hardship if you had to serve for
3 four weeks?

4 FEMALE JUROR: Kind of, sort of, to the fact that I
5 am a school bus driver and there is a national shortage. And I
6 know in my county, to be gone a month, it's taxing for them to
7 find a replacement. That's the only major thing that I have,
8 is what I do.

9 THE COURT: Okay. All right.

10 You expressed the opinion that it would be hard for
11 you to set aside your preconceived opinions and try this case
12 solely on the evidence and the law in the case, and that you
13 had feelings of a certain kind of way toward hate groups that
14 disrupt peace. Of course, there will be allegations in this
15 case that that would -- is an issue.

16 Can you set aside -- do you feel like you can try
17 this case based solely according to what you hear in the
18 courtroom, and, if plaintiff does not prove issues regarding
19 the defendants that the Court tells you they must prove by a
20 preponderance of the evidence, do you feel that you could
21 return a verdict in favor of the defendants? Would it be a
22 tough time -- tough for you to do so?

23 FEMALE JUROR: You're asking if the plaintiff
24 couldn't prove --

25 THE COURT: Does not prove.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 FEMALE JUROR: Does not prove, could I make a
2 judgment --

3 THE COURT: Yes. I mean, the Court will instruct you
4 on the law, and I'll tell you what the plaintiff has to prove
5 by a preponderance of the evidence. Now --

6 FEMALE JUROR: Basically putting aside my personal
7 opinions?

8 THE COURT: Yeah. Can you put aside your personal
9 beliefs that you might have had about this case or the United
10 the Right rally and be --

11 FEMALE JUROR: Kind of what I said is I hope that I
12 could be fair, but I -- to push aside my personal opinions --

13 THE COURT: I take it you know -- you've followed the
14 case and know right much about it?

15 FEMALE JUROR: On the news. So I kind of know what I
16 see from the news.

17 THE COURT: Well, it's all right if you know about
18 it, but you have to be able -- you have to be able to set aside
19 what you already know and try the case according to what you
20 hear only in the courtroom and follow the law as the Court will
21 instruct you.

22 FEMALE JUROR: I think I could if the evidence was
23 presented -- I know this is not helping.

24 THE COURT: Okay.

25 FEMALE JUROR: Well --

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Well, I know it's a tough question.

2 FEMALE JUROR: I would say I would think I could, but
3 I don't know. I have so much personal opinion. I mean, I
4 wouldn't want to -- I know how to be fair, and wanted to, you
5 know, put aside that and listen to -- I don't know why that's
6 difficult for me to explain.

7 THE COURT: Okay. Any questions --

8 FEMALE JUROR: I would want to think that I could,
9 but...

10 THE COURT: Okay.

11 FEMALE JUROR: But 100 percent, I don't know.

12 THE COURT: All right. Thank you. Any questions?

13 MR. KOLENICH: No, Your Honor.

14 THE COURT: Further questions?

15 MS. DUNN: No, Your Honor.

16 THE COURT: All right. I'm going to allow you to go
17 back with the marshal. When you go back, do not discuss the
18 case with anyone or what was brought up here in the courtroom.

19 FEMALE JUROR: Okay.

20 THE CLERK: 160.

21 THE COURT: Do you all need a break yet?

22 MR. KOLENICH: We're okay, Your Honor.

23 THE COURT: All right.

24 The fact that I have let -- didn't say anything about
25 this lady or the other doesn't -- or the gentleman, lawn care

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 fellow, doesn't mean I've decided anything about them.

2 Come on up.

3 All right, sir. State your number as a juror.

4 MALE JUROR: 160.

5 THE COURT: You heard me state this case is likely to
6 last four weeks, starting today. Does that -- knowing that
7 jury service is a vital civic duty, does this timing impose a
8 particular hardship on you that might not be common to every
9 other juror?

10 MALE JUROR: Yes, Your Honor.

11 THE COURT: All right. Would you describe that?

12 MALE JUROR: So I am a company owner, and I run a
13 small business, and it's very vital that I work every day to
14 support my family. So losing up to four weeks' worth of work
15 would be very, very bad for my business.

16 THE COURT: And what type of business are you in?

17 MALE JUROR: So I'm in a stonemasonry company.

18 THE COURT: And are you the sole owner of the
19 company?

20 MALE JUROR: Yes, Your Honor, I am.

21 THE COURT: Do you have other employees that could
22 substitute for you?

23 MALE JUROR: No. I have just one other employee that
24 works with me.

25 THE COURT: And how large a family do you have?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: I have three kids -- one son, two
2 daughters -- and my wife.

3 THE COURT: You also said that you would have trouble
4 wearing the mask. The Court, of course, would require you to
5 wear a mask.

6 MALE JUROR: Yes, Your Honor.

7 THE COURT: I mean, do you have a medical problem
8 with wearing the mask?

9 MALE JUROR: Yeah. Well, one, I have ADHD; two, I
10 suffer from a severe anxiety disorder, and sitting in a room
11 for that long with a mask on my face, this is going to trigger
12 my anxiety constantly throughout the day, which is going to
13 affect my ability to think logically about things throughout a
14 day.

15 THE COURT: All right. You also answered one of the
16 questions that you were asked, would you be able to set aside
17 your preconceived notions, if any, you may have about the Unite
18 the Right rally, this case, and the parties therein, and reach
19 a decision based solely upon the evidence here at trial in
20 accordance with the laws as instructed by the Court, and you
21 answered that question no. Is that still your answer?

22 MALE JUROR: Yes, Your Honor.

23 THE COURT: And can you explain?

24 MALE JUROR: Well, there are certain support groups
25 that I do not stand -- or am kind of prejudiced against, I

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 should say. So I guess that would probably affect my judgment
2 in this case.

3 THE COURT: All right. Are there any questions from
4 either side?

5 All right. I understand your reason for being
6 opposed to wearing the mask is that -- it's your health issues;
7 is that correct?

8 MALE JUROR: Yes, Your Honor.

9 THE COURT: And it's not just that you don't want to
10 wear the mask? Well, none of us want to wear a mask, but --
11 okay.

12 All right. Any other questions?

13 All right. I'll let this gentleman go in with the
14 first...

15 THE CLERK: 164.

16 THE COURT: I didn't ask this question because, I
17 mean, his reason for not wearing the mask wasn't that it was
18 political, I don't believe.

19 MR. CANTWELL: This was 160, right? This is 160?

20 What he had on his questionnaire was: "It's against
21 my beliefs as a Christian."

22 THE COURT: Okay.

23 MR. CANTWELL: And, having read the Bible, I know
24 there's nothing in there about masks. So...

25 THE COURT: All right. Anyway, thank you. There are

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 other more significant issues with him.

2 MR. CANTWELL: I understand.

3 THE COURT: When you pass up a question, write the
4 name of the person who is asking the question.

5 All right. Ma'am, would you give us your jury
6 number?

7 FEMALE JUROR: Are you talking to me?

8 THE COURT: Yes.

9 FEMALE JUROR: I'm sorry.

10 THE COURT: You may take your mask off.

11 FEMALE JUROR: 164.

12 THE COURT: All right. You heard me state earlier
13 that this trial is set to last four weeks, starting today.
14 Now, recognizing that jury service is a vital civic duty, does
15 this pose a problem for you that would be a real hardship, more
16 so on you than most other persons who might be called to serve?

17 FEMALE JUROR: No, sir.

18 THE COURT: All right. You answered that it would be
19 difficult for you to set aside your own -- that you would not
20 be able to set aside your own opinions you have and decide this
21 case based solely upon the evidence you hear at trial in
22 accordance with the law as instructed by the Court.

23 Is that your -- is that still your opinion?

24 FEMALE JUROR: That I would have problems setting
25 aside my opinion? I don't recall ever saying that.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Okay. You will be instructed that the
2 only evidence you may consider in arriving at a verdict is what
3 you hear here in the courtroom, and you have to apply -- the
4 Court will tell you what the law is, and your verdict has to be
5 in accordance with the evidence you believe has been proven in
6 the courtroom and the law as I state it to you.

7 FEMALE JUROR: Yes. I understand that.

8 THE COURT: Would you have any problem --

9 FEMALE JUROR: No.

10 THE COURT: -- doing that?

11 FEMALE JUROR: If that's on my questionnaire, then I
12 guess I misunderstood the question, because I've been on juries
13 before. I don't have a problem. I understand that.

14 THE COURT: Okay. Do you know of any reason you
15 could not be fair to both the plaintiffs and the defendants in
16 this case, if you are called to serve?

17 FEMALE JUROR: No, sir.

18 THE COURT: You are not sensible of any bias or
19 prejudice against any of the parties to the case?

20 FEMALE JUROR: I really don't know a lot about any of
21 them, anyway, as far as the different affiliations. I don't
22 know enough about them to make a strong opinion.

23 I do know that I would have no involvement with any
24 of them, every one of them that you all named on there, but I
25 don't know them enough to make a big opinion about any of the

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 specifics.

2 THE COURT: Well, the plaintiffs will have the burden
3 of proving what it claims against the defendants. And if the
4 plaintiff does not prove what they have the burden to prove,
5 can you render a verdict based solely --

6 FEMALE JUROR: Yes.

7 THE COURT: -- that is fair --

8 FEMALE JUROR: Yes, sir.

9 THE COURT: -- and based on the law?

10 FEMALE JUROR: Yes, sir.

11 THE COURT: Does anyone else have a -- go ahead.

12 MS. DUNN: With the Court's indulgence, Your Honor,
13 one moment.

14 THE COURT: All right.

15 MS. DUNN: Thank you, Your Honor.

16 THE COURT: All right. You said you heard about the
17 case. Can you sort of give us generally what you've heard?

18 FEMALE JUROR: Just what's been on the news when it
19 first happened and all the craziness that went on.

20 THE COURT: Did you form any opinion about who was at
21 fault?

22 FEMALE JUROR: I just thought the whole thing was a
23 tragic nightmare. I really -- you know, I mean, I didn't make
24 it a part of my life or anything. It was just something that
25 was on the news.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: All right.

2 All right. The Court is going to tell you that you
3 have to try -- the jury will have to try this case and look at
4 the evidence against each defendant. And the fact that you may
5 decide one defendant is guilty -- or not guilty but is liable
6 in the case, can you look at the other defendants and still
7 hold the plaintiff to the burden of proof and decide for them
8 if the plaintiff has not proven that they are liable?

9 FEMALE JUROR: I'm not sure I understand your
10 question.

11 THE COURT: I don't blame you. Each defendant is
12 here representing himself. And the fact that one defendant --
13 you think the plaintiff proved the case as to one defendant,
14 but not as to the other, will you be willing -- can you decide
15 the case for the one the plaintiff has not proven is liable?

16 FEMALE JUROR: Yes. Yes.

17 THE COURT: Okay. Thank you. Anything else?

18 All right. When you go back, don't discuss the case
19 or allow anyone to discuss it with you or don't talk about what
20 went on in the courtroom.

21 FEMALE JUROR: Thank you.

22 THE COURT: We're going to take a short recess now,
23 about ten minutes. And try to get back in about ten minutes,
24 if you can.

25 (Recess.)

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: What's the next juror number?

2 THE CLERK: The next juror is 166.

3 THE COURT: Ma'am, you may remove your mask and state
4 your jury number.

5 FEMALE JUROR: 166.

6 THE COURT: You heard me state this case is set for
7 trial for four weeks, starting today. Recognizing the not
8 insubstantial burden this case would place on you, but
9 recognizing jury service is a vital civic duty, does this
10 timing pose any particular hardship for you that wouldn't be
11 common to most persons who are called to serve?

12 FEMALE JUROR: Where I work, it's only a two-person
13 office. So it's just me and my supervisor that runs the whole
14 building. So that's the only thing.

15 THE COURT: All right. I think you expressed some
16 concern about being in crowds because of COVID. Having heard
17 the various steps that the Court has taken to reduce the risk
18 of COVID-19 in the courthouse and courtroom, which are really
19 more stringent than you would find in stores, for example, do
20 you believe that you would be able to set aside your concerns
21 about COVID-19 and focus your attention on the case?

22 FEMALE JUROR: Yes.

23 THE COURT: You noted that you heard about this case
24 every day, I think, for a long time. Can you set aside any
25 preconceived notion you might have about the case and try the

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 case solely according to the law and the evidence?

2 FEMALE JUROR: Yes.

3 THE COURT: Are you sensible of any bias or prejudice
4 against any party in the case?

5 FEMALE JUROR: No.

6 THE COURT: Do you know of any reason you could not
7 serve as a juror in this case and render a verdict that's fair
8 to both the plaintiffs and to the defendants?

9 FEMALE JUROR: No.

10 THE COURT: All right. If there are any questions,
11 please pass them up.

12 FEMALE JUROR: I don't have any questions.

13 THE COURT: No, I'm sorry, I was talking to the
14 lawyers.

15 FEMALE JUROR: Oh, sorry.

16 THE COURT: Are there going to be any?

17 MS. DUNN: Yes, Your Honor.

18 THE COURT: All right. In your questionnaire you
19 mentioned that you have unfavorable views against Antifa, and
20 that it's an organization created to promote fear or violence
21 or social disorder. The question is: Where do those views
22 come from?

23 FEMALE JUROR: Honestly, I feel like they're all a
24 terrorist organization. They are trying to hurt people.
25 That's how my views are, honestly. I try not to listen to the

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 news and just worry about my family.

2 THE COURT: Okay. Realizing that all the plaintiffs
3 will say they're not members of that organization, do you think
4 that you can give the plaintiffs a fair hearing and try -- and
5 make a decision based solely on the law and the evidence if the
6 Court -- and follow the Court's instructions?

7 FEMALE JUROR: Yes.

8 THE COURT: All right. If you are out of work for
9 four weeks, what happens in your office?

10 FEMALE JUROR: Well, it's hard to find coverage,
11 since it's -- you know, there are not a lot of people working
12 right now. And where I work it's a pretty big organization.
13 So it does put a little burden on it.

14 THE COURT: Okay. All right. Thank you. Just a
15 minute.

16 All right. You may -- if there are no further
17 questions, you may go with the marshal back to -- and do not
18 discuss the case with anyone or let anyone in the jury room
19 discuss it with you until you leave today.

20 THE CLERK: 168.

21 MR. STABILE: Your Honor, 168 we do not have a
22 questionnaire.

23 THE COURT: We have one. It's real small. It's hard
24 to read.

25 All right. Ma'am, would you state your jury number?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 FEMALE JUROR: 168.

2 THE COURT: You heard me state that this case is set
3 for trial for four weeks starting today. Recognizing the not
4 insubstantial burden this case would place on you, but
5 recognizing also that jury service is a vital civic duty, does
6 the fact that it's going to maybe last four weeks pose a
7 hardship on you that would not be a hardship for most persons?

8 FEMALE JUROR: No, it does not.

9 THE COURT: Having heard the Court tell you what
10 we're doing to mitigate the problems with COVID, would that
11 alleviate any of your concerns or most of your concerns
12 concerning the COVID situation?

13 FEMALE JUROR: Well, I don't think anything would
14 totally eliminate my concerns, because I really have been
15 avoiding public places and stores, restaurants, even my own
16 family's homes, but it's the best we can do. I understand
17 that.

18 THE COURT: All right. Thank you.

19 One of the questions asked you, "Under the law, the
20 facts at issue in this trial are for the jury to determine.
21 The law applicable to the allegations in the case is something
22 on which the Court will instruct you. You are required to
23 accept the law as the judge explains it to you, regardless of
24 any opinions you might have as to what the law is or should be.
25 Would you have any difficulty following that instruction, if it

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 was at odds with your view of what the law should be?"

2 And you answered "no."

3 FEMALE JUROR: Well, I would try to keep all my
4 personal views out of it, but that would be hard to do.

5 THE COURT: Oh, I'm sorry. You answered "no." I'm
6 sorry. You answered "no."

7 I mean, if the Court -- could you follow the
8 instructions of the Court?

9 FEMALE JUROR: I believe I could.

10 THE COURT: And could you set aside any preconceived
11 notion you have about this case and try the case based solely
12 upon the law and the evidence in the case?

13 FEMALE JUROR: I would do my best.

14 THE COURT: Do you feel that it's likely -- I mean,
15 do you feel you could do it?

16 FEMALE JUROR: Yes.

17 THE COURT: Are there any questions anyone has?

18 MR. STABILE: Your Honor, could we just have a couple
19 of extra minutes to look over her questionnaire?

20 THE COURT: You'll have to speak up.

21 MR. STABILE: Could we have a couple of extra minutes
22 to look at her questionnaire? We just received that.

23 THE COURT: All right.

24 MS. DUNN: Your Honor, unfortunately, the way the
25 questionnaire was photocopied, it is not readable. And so

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 we're wondering if we could either see the original copy or a
2 legible copy.

3 THE CLERK: That is how it was received in the
4 clerk's office.

5 MS. DUNN: Oh, really?

6 THE CLERK: Yes.

7 (Pause.)

8 THE COURT: I'm sorry. We were not able to read the
9 questionnaire. That's why it's taking a little extra time.

10 (Pause.)

11 THE COURT: Yes?

12 MR. STABILE: Your Honor, we have been trying hard to
13 read the questionnaire. I was wondering if maybe the Court
14 could review --

15 THE COURT: All right.

16 MR. STABILE: -- or give the juror her questionnaire.
17 Maybe she could read her answers.

18 THE COURT: Ma'am, I'm going to let you go back to
19 the jury room, and we may call you back for some additional
20 questions. Sorry to inconvenience you.

21 MR. STABILE: Thank you. Or, Your Honor, one
22 alternative is while she's waiting, maybe she could fill it out
23 again and just give us something that we can read.

24 THE COURT: Well, we might do that, too. Do you have
25 another -- can't you make it out?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MR. STABILE: I can make out some things, but I can't
2 make out --

3 MR. SMITH: Some of it's very difficult, Your Honor.

4 THE COURT: It was hard, but we made it out.

5 MR. SMITH: You have to sort of stare at it for a
6 second or two. Sometimes you can see it. Sometimes you can
7 make it out. Sometimes it's too blurry.

8 THE COURT: I can't tell you.

9 MR. CANTWELL: I have a technical question, if I
10 could. I have a computer here with something that says "Juror
11 Information" on it. Is that supposed to be the same thing as
12 these binders? And, if so, I'm double-clicking on it and
13 nothing is happening.

14 THE COURT: I have a real hard time with the mask up.
15 I don't know -- didn't understand that question.

16 MR. CANTWELL: Is there any way other than the
17 binders that I can look at these surveys? No?

18 THE CLERK: Only the binders.

19 MR. CANTWELL: Have the attorneys all had a chance to
20 look at these things already?

21 MR. SPENCER: Well, yes.

22 MR. CANTWELL: Could we evenly distribute the
23 binders, then? Because we have one that we're sharing between
24 us, and -- well, the challenge is that there are three binders
25 with all different jurors in them. And so you have those

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 jurors, I have these jurors, and when we get to the other
2 jurors will be the problem. And so I'm wondering if it might
3 be appropriate if either Richard could switch seats with
4 Mr. ReBrook or I could come over there.

5 Would the marshals -- no? Okay.

6 MR. SPENCER: So I want to see -- how can we fix
7 this?

8 MR. CANTWELL: I've got notes up until Juror 210.
9 After that, I'm S.O.L.

10 THE COURT: Who is the next juror?

11 THE CLERK: The next juror is 172.

12 THE COURT: Let's get that juror in.

13 MS. DUNN: Your Honor, did you already call the
14 juror?

15 THE COURT: Yes.

16 MS. DUNN: Your Honor, if we could have a brief
17 discussion just before the lunch break, we would be grateful.

18 THE COURT: Discussion with the Court?

19 MS. DUNN: Discussion with the Court.

20 THE COURT: All right, sir. Would you -- you may
21 remove the mask and state your jury number.

22 You may state your number.

23 MALE JUROR: 172.

24 THE COURT: All right. Recognizing the burden that
25 this case would place on you, but recognizing also that jury

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 service is a vital civic duty, does the fact that this case is
2 likely to last for four weeks present a hardship to you that
3 wouldn't be common to most other persons who would be called to
4 serve that long? I know it's a long time.

5 MALE JUROR: No.

6 THE COURT: Okay. You expressed some concerns about
7 the COVID situation. Having heard what the Court is doing to
8 try to mitigate the COVID situation, do you think that you
9 could sit on this jury and give good attention to what goes on
10 in the trial, despite the COVID lurking in the background?

11 MALE JUROR: Yes.

12 THE COURT: Do you know of any reason that you could
13 not hear the evidence in this case and render a verdict that's
14 fair to both the defendant and the plaintiffs in the case?

15 MALE JUROR: No.

16 THE COURT: All right. Any questions of this juror?

17 Just a minute.

18 (Pause.)

19 THE COURT: All right. In your questionnaire you
20 referred -- you thought of the -- you answered that "Antifa is
21 a group of extreme left-wing members who have used violence
22 during their protests." If you hear that Antifa was present,
23 would you believe that they were responsible for the violence
24 at the -- or part of the violence at the Unite the Right rally?

25 MALE JUROR: I believe it would be most likely.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: The plaintiffs in this case will say that
2 they were not members of Antifa, but they were just there as
3 local protesters. Can you listen to the evidence in the case
4 and, aside from what you might think of Antifa, give the
5 plaintiffs a fair trial if, under the law, the evidence that
6 you hear in the courtroom dictates that you should return a
7 verdict for the plaintiffs?

8 MALE JUROR: Yes.

9 THE COURT: All right. You did say in your
10 questionnaire that you could set aside any preconceived
11 opinions about the rally and reach a decision based solely upon
12 the evidence you hear at trial in accordance with the law as
13 instructed by the Court. Do you still stand by -- you answered
14 "yes" to that. Do you still stand by that?

15 MALE JUROR: Yes.

16 THE COURT: Thank you. All right. That's all the
17 questions I have for this witness. You may -- when you go back
18 with the other jurors, do not discuss the case with anyone or
19 allow anyone to discuss it with you.

20 We're going to try to get you all out of here soon.

21 MS. DUNN: Your Honor, I apologize. There are a
22 couple of additional questions for this juror, if we could ask
23 the Court's indulgence.

24 THE COURT: What?

25 MS. DUNN: We have a few additional questions.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Okay.

2 MS. DUNN: If we may.

3 (Pause.)

4 THE COURT: Have you heard that Antifa was violent at
5 the Unite the Right rally?

6 MALE JUROR: I can't -- four years ago, I can't
7 recall if there were any news articles that specifically said
8 that or not. I don't know.

9 THE COURT: The issue in this case is that the
10 plaintiffs have charged these defendants with having conspired
11 to come to the rally and create violent acts, whether anyone
12 else such as Antifa came or not. If the plaintiffs proved by a
13 preponderance of the evidence that these defendants conspired
14 to come to Charlottesville and conspired to take violent action
15 while they were here, even though other groups might have
16 committed violent acts, can you try the case between these
17 plaintiffs and these defendants, disregarding what others might
18 have done?

19 MALE JUROR: Yes.

20 THE COURT: Okay. All right. We'll let him go with
21 the other jurors, then.

22 What is the number for the --

23 THE CLERK: 176.

24 MR. STABILE: Your Honor, this is another juror with
25 no questionnaire.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 (Pause.)

2 THE COURT: Thank you, sir. You may remove your
3 mask, if you like. You may remove the mask.

4 Please state your jury number.

5 MALE JUROR: 172.

6 THE COURT: You heard me tell --

7 THE CLERK: That's incorrect. I believe this is 176.

8 MALE JUROR: 176. You're right. 176.

9 THE COURT: You heard me tell you and the other
10 jurors this morning that the case is set for trial four weeks,
11 starting today. Now, recognizing that this is a substantial
12 hardship for you, but is the hardship that's placed on you
13 greater than you think it might be for other jurors, other
14 persons who might be subpoenaed to serve?

15 MALE JUROR: Do I think it is?

16 THE COURT: Yeah. Do you have some particular --

17 MALE JUROR: The only hardship it's going to be is a
18 little bit financial.

19 THE COURT: All right. Would that -- you say it's "a
20 little bit," but it --

21 MALE JUROR: I mean, I'm retired. I have a pension,
22 but also work. That would be completely in the dark.

23 THE COURT: All right. Okay. Do you have any
24 physical or medical limitation that would prevent you from
25 sitting from an hour to an hour and a half without taking a

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 break?

2 MALE JUROR: No, sir.

3 THE COURT: Okay. Do you have any physical or
4 medical limitation that would prevent you from -- you think
5 might prevent you from serving on the jury?

6 MALE JUROR: No, sir.

7 THE COURT: Okay. Did you fill out a questionnaire?

8 MALE JUROR: Yes, I did.

9 THE COURT: And apparently the clerk's office didn't
10 receive it.

11 MALE JUROR: They didn't receive it? I faxed it and
12 I got -- from the county library, and I got a statement saying
13 that it was successfully faxed.

14 THE COURT: Okay. Well, we'll just ask you a few
15 questions now.

16 MALE JUROR: Okay.

17 THE COURT: You know this case is about the Unite the
18 Right rally. Have you heard of that before?

19 MALE JUROR: Is it about the right to rally?

20 THE COURT: Well, it's about the Unite the Right
21 rally that took place.

22 MALE JUROR: Oh, that's the name of the rally.

23 THE COURT: Yes.

24 MALE JUROR: I mean, I remember when it happened, but
25 I'm not a news person. I didn't pay much attention to it.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Do you know who was involved and what it
2 was about?

3 MALE JUROR: No.

4 THE COURT: Okay. You heard the names of the
5 defendants here today and the names of the plaintiffs. Are you
6 sensible of any bias --

7 MALE JUROR: No.

8 THE COURT: -- or prejudice against either party?

9 MALE JUROR: No, not for any of them.

10 THE COURT: Okay. Do you know of any reason you
11 could not serve on a jury and render a verdict fair to both the
12 plaintiffs and the defendants?

13 MALE JUROR: No, sir.

14 THE COURT: Under the law, the facts at issue in the
15 trial are for the jury to determine. The law applicable to the
16 allegations in the case is something which I will instruct you.
17 You are required to accept the law as I explain it to you,
18 regardless of any opinion you might have as to what the law is
19 or ought to be. Would you have any difficulty following that
20 instruction if it was at odds with your views on what the law
21 should be?

22 MALE JUROR: No, I wouldn't take my opinion into it.
23 The law is the law.

24 THE COURT: All right. If there are any questions
25 you all would like to ask, you may.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MS. DUNN: Yes, Your Honor.

2 THE COURT: Are you aware of any preconceived notions
3 about the case, this case? Like, have you formed any
4 opinion --

5 MALE JUROR: No.

6 THE COURT: -- in favor of the plaintiffs or the
7 defendants in the case?

8 MALE JUROR: No, because I don't know either side
9 right now.

10 THE COURT: So...

11 (Pause.)

12 MR. SPENCER: Your Honor, since we don't have the
13 questionnaire that he filled out, would it be appropriate for
14 him to answer one of the questions that was on the
15 questionnaire live?

16 THE COURT: Pass it up.

17 MR. SPENCER: Okay.

18 THE COURT: Just give me the number.

19 MS. DUNN: Your Honor, we have a similar suggestion.
20 If this potential juror would be able to fill out the
21 questionnaire over lunch and then perhaps we can --

22 MALE JUROR: It's in my car. It's in my car.

23 THE COURT: Well, we'll let you go get it. Could you
24 go now and get it and bring it back?

25 MALE JUROR: Right now?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Yes. We'll take up another juror while
2 you're gone, but it will save -- it will expedite you.

3 All right. Who is the next number?

4 THE CLERK: Juror 177.

5 MS. DUNN: Your Honor, may we raise something before
6 the next juror is called in?

7 THE COURT: Yes.

8 MS. DUNN: Because it may pertain to the next juror?

9 Your Honor, I can't see you, so -- okay.

10 With regard to jurors who have expressed extreme
11 views about Antifa, in our view, we do not think the questions
12 about plaintiffs being not Antifa is sufficient to determine
13 partiality, because the question in the case will be are these
14 defendants responsible for violence at the Unite the Right.

15 And so people with extreme views of Antifa may be less
16 inclined, because of their preconceived notions, to believe
17 that defendants could be responsible, and they may be more
18 inclined to believe defendants' claims of self-defense.

19 So we flag this because we -- while we do agree the
20 plaintiffs in this case are not Antifa, we don't think that
21 that cures the issue.

22 THE COURT: Well, as I said, the evidence is very
23 likely to be that Antifa committed acts -- certain acts at this
24 Unite the Right rally. I'm not saying that I know what -- that
25 they did or did not. But the fact that persons who were not

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 one of these defendants committed acts, I mean, I think that's
2 just one of the things you have to -- if the jury says they
3 will follow the law and the evidence, I don't know --

4 MS. DUNN: But the questions that we have submitted
5 to the Court are not about whether plaintiffs are Antifa or
6 not, because that's not relevant to the jury's ability to
7 determine the questions in the case. The question in the case
8 will be about, as you said, responsibility for the violence at
9 Unite the Right. So the concern is that people who have
10 extreme views about Antifa, if defendants say, well, Antifa was
11 responsible, that those extreme views would cloud the ability
12 for the jurors to be impartial. So asking them about the
13 plaintiffs doesn't illuminate that for us.

14 And so we would ask that the questions be phrased to
15 get at the issue of whether the jurors would be more likely to
16 attribute violence not to the defendants, and to others instead
17 based on preconceived notions.

18 MR. JONES: Your Honor, in one of the submitted
19 questions to Juror Number 172, Your Honor's question was
20 whether -- and I think it was one that had been submitted by
21 plaintiffs -- was that the allegations in the case are the
22 defendants came to Charlottesville to commit violence. I think
23 a correct statement of the allegations is that they came to
24 Charlottesville to commit racially motivated violence, not just
25 violence in general. I think that cures the issue with Antifa.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 I don't think it's proper for plaintiffs to be able to ask
2 questions about whether plaintiffs caused violence or
3 defendants caused violence. The theory of the case is racially
4 motivated violence.

5 THE COURT: All right.

6 MR. KOLENICH: Your Honor, there is one other
7 observation on this Antifa. When the Court was questioning 172
8 you, in clarifying his position, stated are you able to
9 disregard what others might have done? And we think that's
10 potentially problematic. The question should be more like are
11 you able to find the defendants -- if the evidence shows that
12 the defendants conspired to commit violence or racially
13 motivated violence, even if others also did violence, rather
14 than just saying disregard what others have done.

15 THE COURT: All right. Okay.

16 MR. SPENCER: Additionally, Your Honor, to address
17 what the plaintiffs just suggested, although it's died down
18 now, I think the talk of Antifa on news and websites and cable
19 news was very high, maybe overblown, I think it's too much to
20 ask that someone doesn't have a preconceived notion of Antifa.
21 They've probably heard it on talk radio at some point.

22 THE COURT: Well, I'll do the best I can to --

23 MS. DUNN: Your Honor, while we're on this pause --
24 and for the record, we did submit a brief on this issue. So we
25 also would flag that for the Court.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: I think both sides could look at some of
2 these jurors and maybe decide that they should have been -- I
3 mean, maybe it's too much to ask, but you could look at the
4 other jurors who are very much for you, but have answered
5 similarly to the jurors you complain of and favor the plaintiff
6 or the defendants. And maybe you all could agree on getting
7 rid of some of them.

8 MS. DUNN: We're happy to speak with defense counsel
9 at the break.

10 THE COURT: If you all could do that, it would
11 certainly shorten things, because right now I'm planning --
12 I've already stopped the third panel today and asked them to
13 come tomorrow. It is important that we keep the panels in
14 order because of the randomness of the jury.

15 MS. DUNN: Understood, Your Honor. We will get
16 together with defense counsel at the break and see if any
17 agreement can be found.

18 THE COURT: I think I misspoke. I moved the fourth
19 panel, not the third panel.

20 MS. DUNN: Thank you, Your Honor. The second issue
21 we wanted to raise at this break is we did submit a question to
22 Your Honor -- I believe it was for juror 166, although I'll
23 verify that -- who said that she was not concerned -- who said
24 on her questionnaire she was not concerned about racial
25 discrimination with regard to blacks or Hispanics or Jews. And

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 our question was to ask her to elaborate on why she said she
2 wasn't at all concerned.

3 We do think in this case, where racial animus is an
4 element that we need to prove and an important aspect --

5 THE COURT: I didn't see that question. Did you pass
6 the question up?

7 MS. DUNN: Yes, Your Honor. I believe it was for
8 juror 166, Your Honor.

9 THE COURT: Okay. Well, you also wrote stuff in
10 script, and I think I just overlooked what was typed.

11 MS. DUNN: Understandable, Your Honor. And our
12 penmanship could be better, certainly.

13 THE COURT: She's number 166?

14 MS. DUNN: Yes. We would seek the opportunity to
15 question her further, or to have the Court question her further
16 on that question.

17 THE COURT: All right. I would have asked the
18 question if I was aware.

19 Where is the juror?

20 THE CLERK: Are we ready for them?

21 THE COURT: Yes.

22 All right. Sir, you may remove your mask while
23 you're speaking. Would you state your jury number, please?

24 MALE JUROR: 12.

25 THE CLERK: 177.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: Oh, 177. I was sitting in 12 back
2 there.

3 THE COURT: You heard me state this case is set for
4 trial for four weeks, starting today. Now, recognizing that
5 that is a substantial burden on you, does it present a hardship
6 for you that would be uncommon to other persons who might be
7 called for jury service?

8 MALE JUROR: No, sir.

9 THE COURT: All right. There may be times during the
10 trial when you would be sitting for an hour and a half or
11 longer without a break. Do you have any physical or medical
12 limitation that would prevent you from sitting that long?

13 MALE JUROR: No, sir.

14 THE COURT: Okay. On this questionnaire you filled
15 out, the question was asked: Would you be able to set aside
16 preconceived opinions, if any you may have, about the Unite the
17 Right rally, this case and the parties therein, and reach a
18 decision based solely upon the evidence you hear at trial in
19 accordance with the law as instructed by the Court? And you
20 answered no to that. Can you explain.

21 MALE JUROR: I'm sorry. I didn't understand the
22 first part of that. You said that I checked no. Can you read
23 it to me again?

24 THE COURT: Yes. Let me hand you down the -- you can
25 just look at it.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: So you want me to explain my answer, is
2 that what you're after?

3 THE COURT: Yes. Do you have the questionnaire?

4 MALE JUROR: To be honest with you, no, I don't know
5 why I checked no, and then I in turn did not give an
6 explanation for that. So actually, I don't know why I marked
7 no on that.

8 THE COURT: Okay.

9 MALE JUROR: Should have been yes.

10 THE COURT: To that question today, then, you would
11 say yes?

12 MALE JUROR: Yes, sir. I'm sorry.

13 THE COURT: If you all have any questions...

14 Are you sensible of any bias or prejudice against
15 either party in the case?

16 MALE JUROR: No. I don't know anybody in the case.

17 THE COURT: Well, do you know of any reason you could
18 not serve as a juror in the case and render a verdict fair to
19 both the plaintiff and the defendant based solely according to
20 the law and the evidence?

21 MALE JUROR: No.

22 THE COURT: All right.

23 MS. DUNN: Your Honor, may I hand this up?

24 THE COURT: Yes.

25 What was your profession before you retired, sir?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: I worked in the maintenance department
2 at State Farm Insurance on Pantops.

3 THE COURT: I'm not sure we read this earlier, but
4 are you requesting to be excused from jury service or are you
5 willing to serve?

6 MALE JUROR: I'd be willing to serve, if you want me
7 to.

8 THE COURT: Okay. Given your views on Antifa as
9 troublemakers, do you think that would make it less likely for
10 you to find the defendants were also responsible for racially
11 motivated violence at the Unite the Right?

12 MALE JUROR: Antifa, all I know about them is what I
13 hear on TV, and it seems like to me that they're always
14 involving themselves into racial riots and stuff and causing a
15 lot of problems with that, through their political beliefs, I
16 feel. But here again, they don't make any difference to me. I
17 don't know any of them and they don't bother me.

18 THE COURT: If the evidence were to show that Antifa
19 and other counter-protesters engaged in violence at the Unite
20 the Right rally, would you still be open -- could you still try
21 the case between the defendants and the plaintiff in this case
22 and not be influenced by what others might have done, but only
23 by what the plaintiffs prove that the defendants in this case
24 did?

25 MALE JUROR: Yeah, I'm not going -- I'm not going --

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 I was told that if I want to be on the jury, that you got to be
2 open-minded about stuff, and I feel like I am. So that comment
3 about Antifa was the way I felt and how I do feel. Whether --

4 THE COURT: All right. Well, you understand there's
5 no Antifa. No one is claiming that any member of Antifa is a
6 party to this case.

7 MALE JUROR: Yeah, I know. That's the reason -- I
8 just answered the question.

9 THE COURT: Yes, sir. All right. Thank you. I'll
10 let you go outside, then.

11 All right. Do you want to call juror 166 back.

12 MR. CANTWELL: Judge, if I may, before we go to the
13 next juror -- it's Christopher Cantwell -- it's actually my
14 understanding that at the minimum Plaintiff Wispelwey is an
15 adherent or at least a sympathizer of Antifa, and that is my
16 view of it, just so that we're precise going forward.

17 THE COURT: Well, I don't know the structure of
18 Antifa. Do they have members sign up?

19 MR. CANTWELL: It is not something that one carries a
20 membership card for, but neither is white nationalism. What
21 you said to that juror was that nobody is saying that the
22 plaintiffs are Antifa. I would certainly be -- I'm certainly
23 of the view that at least Plaintiff Wispelwey is. I have yet
24 to find out about the other plaintiffs.

25 MS. DUNN: Your Honor, if I may, Mr. Cantwell's

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 argument actually underscores why it would be wrong to have
2 people with extreme views about Antifa on the jury. So I just
3 want to emphasize that because we have put a brief before the
4 Court on this issue, and I think that comment underscored that
5 what we're talking about is a real concern.

6 MR. SPENCER: Your Honor, in the words of Joe Biden,
7 Antifa is a cause and not an organization, and I agree with
8 that assessment. As Christopher Cantwell said, you can't have
9 a membership card. It's a kind of general feeling about being
10 anti authority or anti fascism or whatever they would like. So
11 I think the way we're proceeding is entirely appropriate.

12 MR. SMITH: Also, Your Honor -- Josh Smith.

13 Plaintiffs have said in that brief that they said they
14 submitted that no member of plaintiffs -- none of the
15 plaintiffs are Antifa. So for them now to claim that, well,
16 Christopher Cantwell thought that someone is, so then they must
17 be so then we can't ask these questions, that's disingenuous.

18 MR. CANTWELL: The other thing I would say is calling
19 Antifa troublemakers or noting that they've been responsible
20 for a great deal of violence is hardly an extreme view. It's a
21 fact.

22 THE COURT: Ma'am, thank you for coming back. There
23 was one follow-up question that I missed earlier.

24 Question number 41 asked were you not at all
25 concerned about prejudice against -- you checked that you were

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 not at all concerned about prejudice against Jews, racism and
2 blacks, racism against Hispanics. Have you had any experiences
3 that caused you to have those views?

4 FEMALE JUROR: No. I mean, I care, but it's just I
5 try not to really listen to the news or anything. So I don't
6 really have an opinion on either -- any of the matter. That's
7 kind of what I wanted to get across.

8 THE COURT: All right. Thank you. You may go back.
9 Thank you.

10 All right. Regarding the first juror for cause, he's
11 the fellow who was I think trying to -- he had the earpiece.
12 Any objection to that juror?

13 MR. JONES: Which juror was that, Your Honor?

14 THE COURT: 151.

15 MR. STABILE: I'm sorry, Your Honor. To clarify, 150
16 has already been excused?

17 THE COURT: Yeah. 151. We're speaking of 151, who
18 was the lady.

19 MR. SPENCER: 151 is a woman. 150 has already been
20 struck; is that correct?

21 THE COURT: Yes. That was the gentleman --

22 MR. SPENCER: That has the hearing loss issue. That
23 seems reasonable.

24 THE COURT: Any objection to 151 for cause?

25 MR. JONES: What's the cause basis for 151?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: I have no cause.

2 MR. JONES: Oh, I see what you mean. No objection.

3 MR. STABILE: Your Honor, can we have a couple of
4 moments to confer? I'm sorry.

5 THE COURT: All right.

6 MS. DUNN: Your Honor, a proposal, because it may be
7 more efficient for us to confer for ten minutes or so now on --

8 THE COURT: Okay.

9 MS. DUNN: All the jurors we just talked about, and
10 also to confer with the defense. So if you want to give us
11 more time for that.

12 THE COURT: We're going to go back and forth. So you
13 all might think about your peremptories, too, in the meantime.
14 But go ahead and take a few minutes. Don't -- please try not
15 to argue anybody that's obvious.

16 MS. DUNN: We understand, Your Honor. We also want
17 to note we're waiting for juror 176 to retrieve his
18 questionnaire from his car. Oh, 168 and 176, we're waiting on
19 questionnaires for those two.

20 THE COURT: Let's deal with the car -- when he gets
21 back -- is he back? Check and see if he's back. I told him to
22 come back. Did we have somebody else that was doing a
23 questionnaire?

24 THE CLERK: The woman was going to fix hers or do
25 another one.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: That one that was small?

2 THE CLERK: Yes.

3 COURT SECURITY OFFICER: He's back.

4 THE COURT: Okay. Call him in.

5 (Pause.)

6 Who else was doing a questionnaire? 168. If she's
7 finished, take it to Heidi.

8 THE CLERK: Judge, she'll bring us some copies in a
9 second.

10 THE COURT: All right. Sir, I'm going to let you go
11 back -- when the marshal comes back, I'm going to let you step
12 out for a minute and then we'll take up something else while
13 they have an opportunity to read the questionnaire.

14 MALE JUROR: Okay. Go back out?

15 THE COURT: No. Just wait here right now. When he
16 comes back, I'll...

17 (Pause.)

18 Was she finished?

19 COURT SECURITY OFFICER: Yes.

20 THE COURT: Let this gentleman go back with the jury
21 until we get the questionnaires copied, and then we'll call him
22 back.

23 Okay. In the order that we have them, Juror
24 Number -- would it be 153?

25 THE CLERK: 153 would be next, Your Honor.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: 153. Any objection for cause?

2 MR. KOLENICH: Your Honor, I think we missed our
3 presentation for cause on 151, if I could go back to 151.

4 THE COURT: All right.

5 MR. KOLENICH: She had stated "racists came to
6 Charlottesville" and so forth in her answers, and we don't
7 think she came off of that particularly strong label while
8 questioned on the stand.

9 THE COURT: All right.

10 MS. DUNN: Your Honor, we disagree. Out of all the
11 jurors we saw this morning, she was the most direct and to the
12 point about her answers on impartiality. There were other
13 jurors, you know, who we can talk about later, but she had
14 answered, very simply and very clearly, every one of the
15 questions.

16 She was also asked direct questions about the
17 defendants in particular and whether she blamed them, whether
18 she could be impartial, and she specifically said that she
19 didn't blame the defendants, could be impartial, and said that
20 she could set aside preconceived notions.

21 THE COURT: She did answer Question Number 72 yes,
22 but she -- as I recall, she's the one who explained that.

23 MS. DUNN: Your Honor, just to be clear, on
24 Juror 151, her answer to 72 is she can make her decision based
25 on the evidence.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: I think she -- I'm going to deny the
2 motion for cause. I think she sufficiently explained her
3 answers.

4 All right. Number -- which one is next?

5 THE CLERK: 153.

6 THE COURT: 153. That was the young guy who said his
7 business would have to shut down. I think he has an excuse.
8 So I'm going to excuse him.

9 All right. What's next? Number 158.

10 THE CLERK: We excused 158. That was the
11 74-year-old.

12 THE COURT: Excuse me. I'm sorry. Who's the next
13 one?

14 THE CLERK: 159.

15 MS. DUNN: Your Honor, before we get to 159, you had
16 asked -- 158, this gentleman, you told him that he was not
17 statutorily required to serve at age 70. There's no problem
18 with that, obviously. The later juror who was also 70 was not
19 told he was not statutorily required to serve. He was just
20 asked --

21 THE COURT: I wasn't trying to kick him off the jury.
22 The first gentleman appeared to not want to be on the jury, and
23 he didn't seem to know that he had an out. It seemed we were
24 going nowhere with him.

25 MS. DUNN: Understood, Your Honor.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: That's why I told him that.

2 I mean, I don't think we need to try to make -- I
3 mean, and I think I asked him if he wanted -- the second one if
4 he wanted to serve.

5 MS. DUNN: The only point I'm making, just for
6 future, because there may be additional 70-year-olds, and the
7 second 70-year-old, is --

8 THE COURT: Well, unless I've got a reason, I'm
9 not -- that I think they're too old to serve or that they seem
10 not to want to serve, they don't -- that they don't have to
11 serve.

12 MS. DUNN: Understood, Your Honor.

13 (Pause.)

14 MS. DUNN: Your Honor, would the Court be amenable to
15 the lunch break so that we might look at these questionnaires
16 and get organized?

17 THE COURT: No. I want to get rid of these. We
18 don't have enough room for the people that are congregating in
19 the courthouse. But, on the other hand, the jury is about to
20 mutiny, too.

21 MS. DUNN: Your Honor, given your last comment, the
22 reason we raise it is I do think we could be more efficient
23 because we will work through the lunch break. Obviously, we
24 defer to the Court, but if the jury has to have a break, too,
25 now may be a good time.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Okay. We'll break, then, till 2 o'clock.

2 Bring all the jurors back. Just have -- bring them
3 around. I don't need for them to sit down anywhere.

4 Do you all object to me just telling the jury to go
5 to lunch?

6 MS. DUNN: No, Your Honor.

7 MR. KOLENICH: Not at all, Your Honor.

8 (Pause.)

9 THE COURT: I think everyone should go to lunch and
10 be back at 2. If you all want to wait a few minutes until we
11 get the jury out.

12 (Recess.)

13 THE COURT: All right. Good afternoon. We have a
14 juror, a gentleman whose questionnaire is being copied, coming
15 up.

16 THE CLERK: Number 176?

17 THE COURT: 176.

18 (Pause.)

19 THE COURT: All right. Sir, would you state again
20 your jury number?

21 MALE JUROR: 176.

22 THE COURT: Okay. I want to ask you -- looking at
23 Question 72, if I haven't before, it says, "Would you be able
24 to set aside preconceived opinions, if any, you may have about
25 the Unite the Right rally, this case, and the parties therein

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 and reach a decision based solely upon the evidence you hear at
2 trial in accordance with the law as instructed by the Court?"

3 And you answered yes to that.

4 You were asked if there was anything that might
5 influence your ability for a fair and impartial -- judge the
6 evidence presented in this case and apply the law. You
7 answered no.

8 Are there any questions that the parties have?

9 MS. DUNN: Yes, Your Honor.

10 THE COURT: Do you have views on white supremacy?

11 MALE JUROR: I'm not sure exactly what that is.

12 THE COURT: Okay. I'm hesitant to give a definition.
13 I would take it: Do you have opinions regarding whether the
14 white race should be superior over any other race?

15 MALE JUROR: No. I believe everybody is equal.

16 THE COURT: Are there any other questions?

17 (Pause.)

18 THE COURT: If you found the plaintiffs had met their
19 burden of proof with regard to one or more defendants, but not
20 for other defendants, could you separate your views on each
21 individual's guilt or innocence? That is, could you -- it's
22 not guilt for -- not for --

23 MALE JUROR: Yes. Everybody is an individual.

24 THE COURT: Okay. But you understand that each
25 defendant is to be treated separately in this case, and the

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 plaintiff has to prove the case as to each defendant
2 separately?

3 MALE JUROR: Okay. Sounds fair.

4 THE COURT: You have no problem with that?

5 MALE JUROR: No.

6 THE COURT: And do you believe that both white and
7 black persons could be subject to racism?

8 MALE JUROR: There's racism on both sides, yes, if
9 that's what you're saying.

10 THE COURT: Okay. All right. Thank you, sir. You
11 may go out and let the lady come in.

12 COURT SECURITY OFFICER: She hasn't come back yet.

13 THE COURT: All right. We'll have to include her in
14 the next panel, I think.

15 Let's go ahead and talk about the for cause.

16 Which number is the next juror? Where are we on the
17 list? 159?

18 MR. KOLENICH: Yes, Your Honor. As to 159, this was
19 the lady who took quite a long time to answer whether she could
20 set aside her preconceived notions in the case. From the
21 context, it was clear that she meant, could she set aside her
22 preconceived notions about the defendants or the guilt of the
23 defendants. We believe that's sufficient cause for a strike.

24 THE COURT: Okay.

25 MS. DUNN: Your Honor, at the end of the questioning

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 her exact quote when asked if she could set aside her views
2 was, "I could. I know how to be fair."

3 You know, the other thing, Your Honor, that we feel
4 we must point out is this woman is the only minority juror on
5 this panel.

6 THE COURT: Now, that doesn't mean that you still
7 don't have to be qualified.

8 MS. DUNN: Agree completely, Your Honor, which is why
9 my first point is that we believe her answers qualify her. She
10 said -- when asked if she could set aside her views, she said,
11 "I could. I know how to be fair."

12 And similarly, on her questionnaire, she said, you
13 know, that she would hope that she could be fair. So I think
14 at the end of the day, that was her answer under questioning,
15 including repeated questioning from the Court.

16 MR. CANTWELL: If I may, this is Christopher
17 Cantwell. I'd like to note this juror also seems to have
18 extreme views about race. She seems to be very concerned about
19 racism in all categories except for against white people.

20 MR. SPENCER: Your Honor, this is Richard Spencer.
21 If someone asks me could you set aside preconceived notions and
22 be fair, I would answer that without hesitation. She required
23 repeated questioning for five minutes.

24 THE COURT: I thought I went as far as I could to
25 rehabilitate her, to get her to say she could set aside, and

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 she did not. And I appreciate the situation. So I'm going to
2 excuse her for cause.

3 Okay. Next?

4 THE CLERK: 160.

5 THE COURT: 160. Any objections for cause?

6 MS. DUNN: No objection. I apologize. I'm being
7 told I am incorrect.

8 I apologize, Your Honor. I thought the Court was
9 asking whether there were any objections to the Court's
10 dismissing for cause.

11 To clarify, are you asking whether the parties have
12 an objection?

13 THE COURT: Yes.

14 MS. DUNN: A cause objection?

15 THE COURT: Yes.

16 MS. DUNN: Yes, we do.

17 THE COURT: Okay.

18 MS. DUNN: This juror should be dismissed for cause
19 on three independent bases. The first is that he says he has
20 ADHD, severe anxiety disorder, and will constantly be triggered
21 under -- having to wear a mask, which will affect his ability
22 to think logically. That's the first reason.

23 The second reason, he said, is that he can't decide
24 the case on the evidence. He said, in fact, that there are
25 certain groups where he himself is prejudiced. And there was

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 no rehabilitation of that.

2 And then the third independent basis, Your Honor, is
3 that he says he is a company owner with a small business where
4 he has to -- it's vital for him to work all day to support his
5 family of three children and his spouse.

6 THE COURT: All right. I'm going to excuse him for
7 cause.

8 MS. DUNN: Thank you, Your Honor.

9 THE CLERK: 164.

10 THE COURT: 164. Anyone challenge for cause? She
11 cleared up question 72, as I recall. She said she
12 misunderstood.

13 Okay. There being no objection for cause, we'll
14 pass.

15 THE CLERK: 166.

16 MS. DUNN: Your Honor, plaintiffs do have a cause
17 objection to this individual. Again, here there are several
18 bases. The first basis is that she called Antifa a terrorist
19 organization, which is really the most possible -- the most
20 extreme possible language, saying they are trying to hurt
21 people. Mr. Cantwell put on the record that in fact he does
22 plan to argue that one of our clients is a member of Antifa or
23 associated with Antifa.

24 THE COURT: Well, I thought it was in the record that
25 you denied that anyone was a member of Antifa?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MS. DUNN: It is correct that plaintiffs do deny
2 that, but Mr. Cantwell put on the record today that he plans to
3 argue that one of the plaintiffs is a member of Antifa. And
4 that's core to his argument. He said that. And so this is a
5 woman who doesn't just have a view or some disapproval.

6 THE COURT: Well, I mean, Mr. Cantwell is going to
7 argue that he's not liable in this case, I assume.

8 MS. DUNN: That's right. And if somebody came in
9 here and said that they believe Mr. Cantwell was a terrorist,
10 that would be a very compelling argument for him to make for
11 cause. But he has said he's going to argue that one of our
12 clients is part of what this woman considers to be a terrorist
13 organization.

14 MR. CANTWELL: Judge, if I may, Christopher Cantwell.
15 I don't know that I said it was core to my defense. And I
16 don't think I used the word "member." I think I said something
17 to the effect of adherent; it's a viewpoint.

18 MS. DUNN: Your Honor, we can check the transcript.
19 I do believe that's what Mr. Cantwell said. But it's
20 immaterial. This woman is coming in believing that this is a
21 terrorist organization. That's her strongly held view as
22 disclosed in her questionnaire.

23 THE COURT: Okay. But could you believe that they
24 are a terrorist on the left and your clients are not in that
25 group? Like there could be terrorists on the right and persons

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 not on the right, but not as far as the terrorists?

2 MS. DUNN: But Your Honor, that might be true in a
3 case where one of the defendants had not said that is what he
4 plans to argue.

5 THE COURT: Well, I won't let him argue that. How
6 about that? If you don't have any evidence that a person is a
7 member of Antifa -- if you have evidence now, say so and we'll
8 take it up.

9 MR. SPENCER: That seems very reasonable, Your Honor.
10 I will not be arguing that about the defendants.

11 MR. CANTWELL: I intend to ask Mr. Wispelwey if he
12 tweeted, "Jesus is Antifa." I intend to ask him that question,
13 because he did.

14 MS. DUNN: Your Honor, respectfully, we request this
15 juror be dismissed for cause.

16 MR. JONES: Your Honor, she was expressly asked if
17 she could be fair, if she could set aside, and she said yes to
18 that question.

19 THE COURT: The objection is overruled. I'm passing.
20 That juror will pass.

21 MS. DUNN: Your Honor, I began on this juror by
22 saying that there are two other bases to strike her for cause,
23 so I'd like to put those before the Court as well.

24 On her questionnaire she says she's not vaccinated
25 and that she and her son both have a severe autoimmune disease.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 In court today she said she works in a two-person office, which
2 is just her and her supervisor. So we believe that those are
3 additional bases for cause.

4 THE COURT: Well, they may be reasons for her to ask
5 to be excused, but I asked her and she didn't. I mean, if you
6 don't claim -- it's not -- the Court can't excuse people
7 because they have a right to be excused as opposed to have a
8 reason that they should not serve.

9 MS. DUNN: Your Honor, I understand, and obviously we
10 defer to the Court, but she was not asked if she wanted to be
11 excused. So we --

12 THE COURT: Okay.

13 MS. DUNN: I understand.

14 THE COURT: Well, that's not -- if I asked all the
15 jurors every day if they wanted to be excused, I doubt that
16 we'd ever pick a jury in several days, probably.

17 MS. DUNN: I mean, you did ask one of the jurors.

18 THE COURT: I know you think -- and I explained that,
19 okay?

20 MS. DUNN: I understand, Your Honor.

21 THE COURT: All right. Next juror.

22 THE CLERK: 166.

23 THE COURT: Okay. Any objection to number 166 for
24 cause?

25 MS. DUNN: Your Honor, we just covered 166. I

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 apologize.

2 THE CLERK: Oh, I'm so sorry. 168. I think that's
3 the juror we're waiting to come back in.

4 COURT SECURITY OFFICER: She's here.

5 THE CLERK: Pass her?

6 172.

7 THE COURT: All right. Any objection to number 172
8 for cause?

9 MS. DUNN: Yes, Your Honor.

10 THE COURT: All right.

11 MS. DUNN: Your Honor, this juror was expressly
12 asked, if he heard that if Antifa were present at Unite the
13 Right, would he believe that they were responsible for the
14 violence, and he responded that yes, he would believe it would
15 be most likely.

16 The issue -- there are two issues here. One is that
17 we covered with the last juror that's not present about the
18 plaintiffs. Here one of -- the literal core of this case is
19 responsibility for the violence of the Unite the Right. And
20 when he was asked if just the presence of Antifa would make him
21 believe that they were responsible, he said it would be most
22 likely. And that is a basis to strike him for cause.

23 MR. KOLENICH: Your Honor, the Court rehabilitated
24 172 by asking him would he disregard whatever others might have
25 done, whatever third parties might have done, and he responded

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 yes, he would.

2 THE COURT: Okay. I deny the motion as to him and
3 pass him. Let's let the lady come in -- the other lady that's
4 here.

5 THE CLERK: 168.

6 THE COURT: All right. Thank you. Are there any
7 questions now that you wish to ask for this juror?

8 MR. SPENCER: I'm sorry, we don't have the
9 questionnaire for her. Should we -- is that correct or am I
10 mistaken?

11 THE CLERK: We gave it to counsel at lunch.

12 THE COURT: On the questionnaire, I'm looking at
13 Question Number 72, which was not answered. Would you be able
14 to set aside preconceived opinions, if any, you may have about
15 the Unite the Right rally, this case, and the parties therein,
16 and reach a decision based solely upon the evidence you hear at
17 trial in accordance with the law as instructed by the Court?

18 FEMALE JUROR: I believe so, sir.

19 THE COURT: All right. How sure are you that you
20 can?

21 FEMALE JUROR: Excuse me?

22 THE COURT: You may take your mask off.

23 You say you believe you can.

24 FEMALE JUROR: I believe so, yes.

25 THE COURT: All right. Is there anything the Court

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 should know that might influence your ability to fairly and
2 impartially judge the evidence presented in this case and apply
3 the law as instructed by the Court?

4 FEMALE JUROR: I don't believe so, sir.

5 THE COURT: Are there any other questions?

6 MS. DUNN: No, Your Honor.

7 THE COURT: All right. You may step down.

8 (Juror out.)

9 All right. Let's take her up right now. Any
10 objection as to her for cause?

11 Okay. Hearing none, we'll pass.

12 Next?

13 THE CLERK: 176.

14 THE COURT: Any objection as to 176?

15 MR. SPENCER: 176?

16 THE COURT: Yes.

17 MR. SPENCER: No objection.

18 THE COURT: No objection?

19 MS. DUNN: No objection.

20 THE COURT: All right. We'll pass.

21 THE CLERK: 177.

22 MS. DUNN: No objection.

23 MR. SPENCER: No objection.

24 THE COURT: Okay. Who's next?

25 THE CLERK: That's all on this list, Your Honor.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Okay. That's all on the first panel?

2 THE CLERK: Yes, sir.

3 THE COURT: Okay. Are you all ready to go into the
4 peremptory strikes?

5 MR. SPENCER: Could we have a few minutes to confer?

6 THE COURT: Can we take ten minutes, agree on ten
7 minutes?

8 THE CLERK: Your Honor, would you like me to confirm
9 for everybody to mark on their judge's random list what I have?

10 THE COURT: Yes.

11 THE CLERK: Because that's the list we will be
12 working from.

13 Can you hear me now? Sorry. I had my microphone
14 off.

15 I had for cause marked off on the judge's random list
16 Juror 1, which is 159; Juror 2, which is 158; Juror 6, which is
17 153; Juror 8, which is 160; and Juror 10, which is 150.

18 THE COURT: Is everyone in agreement with the clerk?

19 MR. JONES: Yes.

20 MS. DUNN: Yes.

21 THE COURT: Heidi, when you're ready --

22 THE CLERK: Are you going to give them that break?

23 THE COURT: Yes. We already started. We'll be in
24 recess about eight more minutes.

25 (Recess.)

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE CLERK: Do you want me to go over the Kiser
2 strike method?

3 So, counsel, as we discussed the other day about the
4 strike method we're going to use, you're going to each have six
5 strikes -- the plaintiffs will have six strikes, the defendants
6 will have six strikes -- which they can exercise jointly after
7 consultation. And I will start with the plaintiffs' side. I
8 will ask plaintiffs: Juror Number, in this instance, 3, pass
9 or challenge? If a pass is selected, the opposing party will
10 be asked: Juror Number 3, pass or challenge? If both parties
11 select pass, that prospective juror will become a member of the
12 panel.

13 Twelve jurors will be impaneled for this trial. The
14 process is repeated, alternating terms of selection, until all
15 members are considered.

16 Attorneys -- I don't think I need to read that part.

17 Once all jurors are considered or all strikes are
18 used or the requisite number of jurors have been selected,
19 we'll check our list to make sure we're in concurrence with who
20 is remaining, and we will ask the jurors who are selected, once
21 we have verified our list, to stand. They'll remain standing.
22 The Court will excuse the jurors who are seated, and they will
23 get direction from the Court at that point.

24 (Pause.)

25 THE CLERK: They'll be given directions from the

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 clerk's office. We'll send them to the clerk's office to get
2 direction.

3 THE COURT: All right. Bring the jury back in.

4 MS. DUNN: Your Honor?

5 THE COURT: Yes.

6 MS. DUNN: Is it the intention to bring the jury back
7 in for this part?

8 THE COURT: Yes.

9 THE CLERK: Judge, do you want me to excuse
10 immediately the ones that we have already excused during --

11 THE COURT: No. I think we'll go through it fast
12 enough that we can let those go all at one time.

13 THE CLERK: Just immediately skip to Juror Number 3?

14 THE COURT: I think we'll take the ones who are going
15 to serve and ask them to go to the -- remain.

16 **(Jury in, 2:53 PM)**

17 THE COURT: Members of the jury, we're going to
18 complete the process now. Within about 20 minutes, I think
19 I'll be able to excuse you all for the day and tell you who of
20 your group is going to be on the jury.

21 We have a number of groups coming after you until we
22 pick a jury. But you may have -- everybody have a seat.

23 You may proceed.

24 THE CLERK: Jurors, I want to remind you you've been
25 referred to by your numbers up until this point. During this

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 process we will now be using a different number for a random
2 process. So you will no longer be hearing the number you've
3 been being called. I just wanted to let you know.

4 THE COURT: All right.

5 THE CLERK: Plaintiffs, Juror Number 3, pass or
6 challenge?

7 MS. DUNN: Pass.

8 THE CLERK: Defendants, Juror Number 3, pass or
9 challenge?

10 MR. KOLENICH: Pass.

11 THE CLERK: Defendants, Juror Number 4, pass or
12 challenge?

13 MR. CAMPBELL: Ms. Wheeler, would it be possible to
14 also list the other number?

15 THE CLERK: It's supposed to be random. So we're not
16 supposed to call that number out.

17 MR. CAMPBELL: Yes, ma'am.

18 MR. SPENCER: So you were asking the defendants on
19 Number 4?

20 THE CLERK: Correct, off the judge's random list,
21 Number 4.

22 MR. SPENCER: Pass.

23 THE CLERK: Plaintiffs, Juror Number 4, pass or
24 challenge?

25 MS. DUNN: Pass.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE CLERK: Plaintiffs, Juror Number 5, pass or
2 challenge?

3 MS. DUNN: Pass.

4 THE CLERK: Defendants, Juror Number 5, pass or
5 challenge?

6 MR. SPENCER: Pass.

7 THE CLERK: Defendants, Juror Number 7, pass or
8 challenge?

9 MR. SPENCER: Challenge.

10 THE CLERK: Plaintiffs, Juror Number 9, pass or
11 challenge?

12 MS. DUNN: Challenge.

13 THE CLERK: Defendants, Juror Number 11, pass or
14 challenge?

15 MR. SPENCER: Pass.

16 THE CLERK: Plaintiffs, Juror Number 11, pass or
17 challenge?

18 MS. DUNN: Challenge.

19 THE CLERK: Defendants, Juror Number 11, pass or
20 challenge?

21 MR. SPENCER: I think you mean 12.

22 THE CLERK: I'm sorry. Number 12. Thank you.

23 MR. SPENCER: Pass.

24 THE CLERK: Actually, that was -- I apologize. That
25 should have been: Plaintiffs, Juror Number 12, pass or

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 challenge?

2 MS. DUNN: Challenge.

3 THE CLERK: Jurors, as I call your name, please stand
4 and remain standing.

5 THE COURT: You mean number.

6 THE CLERK: Yes, I'm sorry. Number. I don't have
7 any names on my list.

8 164, 168, 177.

9 THE COURT: All right. You three will remain in the
10 courtroom.

11 THE CLERK: I'm sorry. I'm not seeing three
12 standing.

13 164, 168, 177.

14 THE COURT: Where is the other one?

15 You jurors who are seated, I'm going to excuse you at
16 this time. We appreciate very much you being here today. We
17 could not have reached -- been able to select the number of
18 jurors we did without your presence. You've done a great
19 service to your community by serving -- being here today to
20 help us pick this jury. And so I'm going to excuse you now.

21 The two of you who are standing, please remain.

22 Oh, here's the other lady. Okay. All right. Which
23 lady is the one?

24 THE CLERK: Number 164.

25 THE COURT: 164.

1 Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 All right. You are to remain with the other two
2 jurors standing. And I'm excusing everyone else. And thank
3 you very much for your service. So you all may leave now.

4 Ma'am, you may leave. Thank you for being here.

5 All right. You three will be on the jury. And we'll
6 try to give you -- you keep in touch and use that phone number
7 to tell you when the case will start. We would hope to get --
8 you know, we plan to start with the trial on Wednesday, but I
9 can't guarantee you that will be the case. But unless you hear
10 to the contrary, be back at 9 a.m. Wednesday morning.

11 Now, during this time, do not discuss the case with
12 anyone. Do not allow anyone to discuss the case with you. Do
13 not remain within hearing of anyone discussing the case, and do
14 not do any research about or read, listen, or in any way
15 acquire any information about the case. You're just simply not
16 to talk about the case with anyone; friends, family, or anyone.

17 So I'm going to excuse you and ask you to be back
18 9 a.m. Wednesday morning unless you hear to the contrary.

19 You may leave at this time.

20 **(Jury out, 3:04 p.m.)**

21 THE COURT: All right. Are you ready to call the
22 third -- second panel?

23 THE CLERK: We have new paperwork.

24 **(Jury in, 3:08 p.m.)**

25 (Pause.)

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Members of the jury, before we begin, I
2 want to read this to you. I wish to give you a statement of a
3 brief overview of some of the steps the Court has taken, and is
4 taking, to minimize the risk of the spread of COVID-19.

5 First, the Standing Orders of this Court require
6 everyone to wear a mask that covers their nose and mouth while
7 in public areas of the courthouse unless a court official
8 specifically directs otherwise. That applies to everyone,
9 whether vaccinated or unvaccinated.

10 Second, access to the courthouse has been limited to
11 persons involved in this case. That includes court staff,
12 litigants, attorneys, witnesses, and limited media.

13 Third, the Court has ordered all persons in the
14 courtroom to practice social distancing, except counsel,
15 litigants, and court staff.

16 Fourth, pursuant to the Court's Standing Order, all
17 court employees, including judges, chamber staff, and staff in
18 the clerk's office, must either be vaccinated or conduct a
19 COVID-19 test at least weekly.

20 Fifth, this Court has specifically ordered all
21 litigants, lawyers, witnesses, and staff -- court staff in this
22 case to attest before coming into the courthouse that they are
23 either vaccinated or have tested negative within three days of
24 their appearance. They will have a continuing duty to do so
25 throughout the trial if they are appearing based on negative

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 COVID tests. If there are any witnesses, parties, or attorneys
2 who can't meet these rules, they will be -- they will testify
3 by Zoom.

4 Sixth, the Court has ordered extra cleaning of touch
5 points, frequently touched surfaces, and bathrooms during the
6 trial.

7 And lastly, specifically for jurors, the Court will
8 require all jurors, of which the Court expects there will be
9 12, to be -- to always be masked. Jurors will also be socially
10 distanced in the gallery.

11 Now, frankly, I believe that the conditions that we
12 are creating in the courthouse make it as safe to be here as
13 anywhere you might go in the public, such as stores or church
14 or any other event such as that, because we are really trying
15 to be as careful as we can concerning COVID.

16 Before we begin the process of jury selection, I wish
17 to give you a general overview of this case so that you know
18 what it is about and can better answer my questions.

19 This is a civil lawsuit brought by multiple
20 plaintiffs against multiple defendants, including individuals
21 and organizations, based on events that occurred in
22 Charlottesville, Virginia in August 2017. The plaintiffs in
23 this case claim that the defendants and others conspired to
24 commit racially motivated violence at an event the defendants
25 called Unite the Right, which was held in Charlottesville on

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 August 11 and 12, 2017.

2 Plaintiffs allege that the defendants helped to plan,
3 promote, or carry out racially motivated violent acts during
4 that event, and in doing so caused plaintiffs physical,
5 emotional, and monetary harm. Such acts include a torch march
6 on August 11 and various acts of violence on August 12,
7 including a car attack that drove through a large crowd of
8 people, injuring seven of nine plaintiffs in this case.

9 Defendants deny that they conspired with anyone to
10 commit violence, or that they are responsible for any injury or
11 damages suffered by plaintiffs.

12 If you are selected to serve as a juror in this case,
13 you will be asked to decide whether the plaintiffs proved that
14 the defendants engaged in a conspiracy to commit racially
15 motivated violence and harmed plaintiffs as a result.

16 Plaintiffs have also asserted other federal and state
17 claims against the defendants. Later, I will explain the
18 elements of each of plaintiffs' claims in greater detail to
19 those of you who serve on the jury.

20 It is estimated that this case will last four weeks,
21 including this week. Trial will take place Monday through
22 Friday, with the final scheduled trial date being Friday,
23 November 19. I will start court once the jury trial begins at
24 9 o'clock in the morning, and we will stop court, as best
25 possible, by 5 p.m. in the afternoon.

1 Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 Soon, the clerk and the Court are going to ask you
2 some questions concerning your potential service as a juror in
3 this case. This process is referred to as voir dire. There
4 are several reasons for the questions we will ask you.

5 First, it may be that, although otherwise qualified,
6 some of you may not be eligible to sit in this particular case
7 for a variety of reasons. We need to ask questions to
8 determine your eligibility.

9 Also, under the rules that govern jury selection in
10 this Court, the parties play a role by choosing the jury that
11 is to try the case. That is why we have more of you here than
12 we really need to sit on the jury. Under the rules, the
13 parties are entitled to exercise strikes to eliminate persons
14 from the jury panel, and then the remaining jurors will hear
15 the case. The parties need to know more about you in order to
16 make intelligent decisions about who to strike.

17 The Court will be conducting jury selection in the
18 following manner: First, the clerk will ask you collectively
19 some very general questions to establish your qualifications to
20 serve. Second, the Court will ask you some general questions.
21 And third, the Court will call each prospective juror for any
22 specific follow-up questions the Court may have.

23 Throughout this process, the clerk and the Court will
24 refer to you by juror number, not your name. This is a step we
25 sometimes take for the sake of our prospective jurors and

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 jurors' privacy.

2 We need to ask questions to determine your
3 eligibility. Also, under the rules that govern jury selection
4 in this Court, the parties play a role in choosing the jury
5 that is to try the case. That is why we have more of you
6 here -- wait a minute. Strike that.

7 So if you could, please also refer to yourself
8 whenever needed by juror number.

9 For these preliminary questions, if the clerk or the
10 Court asks you a question and you have a response to the
11 question asked, please raise your hand and you will be called
12 on, so that if the Court asks are you here today to be
13 considered to serve as a juror in this case, you would all
14 raise your hand.

15 If you feel your answer to any question is
16 particularly personal in nature, you may ask to speak with me
17 and the attorneys privately; however, just so you are aware,
18 for the most part I do plan to mostly conduct any specific
19 questioning with each prospective juror individually without
20 other prospective jurors in the courtroom.

21 Now we will begin the process of selecting the jury
22 to hear the case. Would you swear the jury?

23 THE CLERK: Yes, Your Honor.

24 This is Civil Action Number 3:17-cv-72, Elizabeth
25 Sines and others versus Jason Kessler and others.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 I will call your number and if you would stand and
2 remain standing until I call the next number, and then you may
3 sit down.

4 Number 183, 185, 186, 189, 190, 194, 196, 197, 203,
5 206, 207, 210, 212, 213.

6 Ladies and gentlemen, if you would, please stand
7 again. Would you please raise your right hands and be sworn?

8 Do you and each of you solemnly swear that you will
9 make true answers to such questions as may be propounded to you
10 testing your qualifications to serve as a juror in this court?

11 You do.

12 You may be seated.

13 Ladies and gentlemen, in order to serve as a juror in
14 this court, you must be a citizen of the United States who has
15 attained the age of 18 years and has resided in the Western
16 District of Virginia for one year. You must not be under
17 charge or have been convicted in any court, state or federal,
18 of a crime punishable by imprisonment for a period of more than
19 one year, unless your civil rights have been restored.

20 You must be able to read, write, and understand the
21 English language and must be able both physically and mentally
22 to render efficient jury service. Do you and each of you
23 qualify on these grounds?

24 You do.

25 Ladies and gentlemen, I will now ask several

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 questions concerning the case which is to be tried today for
2 the purpose of ascertaining whether you can hear the facts
3 fairly and impartially and render a just verdict.

4 The plaintiffs in this case are Elizabeth Sines, Seth
5 Wispelwey, Marissa Blair, April Muniz, Marcus Martin, John Doe,
6 Natalie Romero, Chelsea Alvarado, and Thomas Baker. The
7 plaintiffs are represented by counsel seated to my right.

8 Counsel will now identify themselves by name and firm
9 for the record.

10 MS. DUNN: Good morning. Karen Dunn, Washington,
11 D.C.

12 MR. ISAACSON: Bill Isaacson, Paul Weiss, Washington
13 D.C.

14 MR. STABILE: Renato Stabile, New York.

15 MS. KAPLAN: Roberta Kaplan from the law firm of
16 Kaplan Hecker & Fink, New York.

17 MR. MILLS: David Mills, Cooley. I'm in Bethesda,
18 Maryland.

19 MR. LEVINE: Alan Levine from Cooley, New York, New
20 York.

21 MS. PHILLIPS: Jessica Phillips, Paul Weiss,
22 Washington D.C.

23 MR. BLOCH: Michael Bloch from Kaplan Hecker & Fink,
24 New York City.

25 MS. HONIG: Faye Honig, New York City.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE CLERK: The defendants in this case are Jason
2 Kessler, Richard Spencer, Christopher Cantwell, James Alex
3 Fields, Jr., Vanguard America, Andrew Anglin, Moonbase Holdings
4 LLC, Robert Azzmador Ray, Nathan Damigo, Elliott Kline,
5 Identity Evropa, Matthew Heimbach, Matthew Parrott,
6 Traditionalist Worker Party, Michael Hill, Michael Tubbs,
7 League of the South, Jeff Schoep, National Socialist Movement,
8 Nationalist Front, Augustus Sol Invictus, Fraternal Order of
9 the Alt-Knights, Loyal White Knights of the Ku Klux Klan and
10 East Coast Knights of the Ku Klux Klan.

11 The defendants are appearing both with counsel or on
12 their own behalf. They are seated to my left or appearing by
13 Zoom. Counsel and the defendants will now identify themselves
14 for the record.

15 MR. SPENCER: My name is Richard Spencer. I'm acting
16 on my own behalf. I live in Whitefish, Montana.

17 MR. SMITH: Josh Smith, Smith LLC, Pittsburgh,
18 Pennsylvania. I represent David Matthew Parrott, Matthew
19 Heimbach, and Traditionalist Worker Party.

20 MR. KOLENICH: Jim Kolenich, Kolenich Law Office,
21 Cincinnati, Ohio. I represent Jason Kessler, Nathan Damigo,
22 and Identity Evropa.

23 MR. JONES: Bryan Jones, Charlottesville, Virginia.
24 I represent Michael Hill, Michael Tubbs, and the League of the
25 South.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MR. CAMPBELL: David Campbell. I represent James
2 Fields, and I'm from Richmond, Virginia.

3 MR. REBROOK: Edward ReBrook. I'm from Burke,
4 Virginia. I represent the National Socialist Movement, Jeff
5 Schoep, and Nationalist Front.

6 MR. CANTWELL: My name is Christopher Cantwell. I'm
7 proceeding *pro se*.

8 THE CLERK: The purpose of my mentioning this is to
9 ask each of you whether you are related by blood or marriage to
10 the plaintiffs, defendants, or any of the attorneys in this
11 action. If you are, please state so to the judge.

12 Your Honor, do you have additional questions?

13 THE COURT: Members of the jury, you've heard the
14 clerk read the names of the plaintiffs and you've heard counsel
15 in the courtroom introduce themselves. At this time I will ask
16 plaintiffs' counsel to state the names of any new counsel who
17 entered an appearance in this case since the Court circulated
18 the jury questionnaire, other than those who are in the
19 courtroom.

20 MS. DUNN: No new counsel, Your Honor.

21 THE COURT: Same for the defendants: Are there any
22 new counsel?

23 MR. KOLENICH: None, Your Honor.

24 THE COURT: For the prospective jurors, upon hearing
25 the names and seeing plaintiffs and plaintiffs' counsel, as are

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 present in the courtroom, do you recognize them or realize that
2 you know them? If so, please raise your hand.

3 You also heard the clerk read the names of the
4 defendants and you heard defense counsel in the courtroom
5 introduce themselves. Upon hearing those names, do you
6 recognize them or realize that you know them?

7 Yes, sir?

8 MALE JUROR: I recognize the name Richard Spencer.

9 THE COURT: Do you know Mr. Spencer?

10 MALE JUROR: Not personally, but I just knew his
11 name. I don't recognize him personally.

12 THE COURT: And your number, sir?

13 MALE JUROR: 190.

14 THE COURT: Okay. I'm now going to ask plaintiffs'
15 counsel -- was there anyone else that knew -- yes, sir?

16 MALE JUROR: Yes. I recognize Richard Spencer and
17 Christopher Cantwell.

18 THE COURT: What is your number?

19 MALE JUROR: 196.

20 THE COURT: And you knew?

21 MALE JUROR: Richard Spencer and Christopher
22 Cantwell.

23 THE COURT: All right. Thank you.

24 THE CLERK: There was one other gentleman.

25 THE COURT: Yes, sir.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: Same answer. I know those two names.

2 THE COURT: What is your number, sir?

3 MALE JUROR: 206.

4 THE COURT: And you personally know someone?

5 MALE JUROR: No, I don't know them personally. I
6 just know the names.

7 THE COURT: Okay. And who is it that you know?

8 MALE JUROR: Christopher Cantwell and Richard
9 Spencer.

10 THE COURT: All right. I'm going to ask the
11 plaintiff to read the names of any witnesses --

12 THE CLERK: There was another hand, Judge.

13 THE COURT: Yes, sir.

14 MALE JUROR: I have the same recognition of
15 Mr. Kessler and Mr. Cantwell.

16 THE CLERK: Your number?

17 MALE JUROR: 186.

18 THE COURT: Okay. Thank you. I'm going to ask
19 plaintiffs' counsel to read the names of any witnesses that
20 they may be calling, and I'll ask you to listen carefully to
21 the names. And if you recognize someone you know, say so.

22 MS. DUNN: Thank you, Your Honor.

23 Chelsea Alvarado, Jessica Alvarado, Thomas Baker,
24 Marissa Blair, Julie Convisser, Diane D'Costa, Stephen Fenton,
25 Allen Groves, Deborah Lipstadt, Marcus Martin, April Muniz,

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 Winston Gwathmey, Sharon Reavis, Natalie Romero, Peter Simi,
2 Elizabeth Sines, Devin Willis, Seth Wispelwey, Nadia Webb, and
3 David Weiss.

4 There is a second list that I'll also read. Erica
5 Alduino, Robert "Ike" Baker, Patrick Casey, Michael Chesny,
6 Burt Colucci, Benjamin Daley, Shane Duffy, Samantha Froelich,
7 Bradley Griffin, Dillon Hopper, Vasilios Pistolis, and Thomas
8 Rousseau.

9 THE COURT: Did anyone recognize a name among that
10 group who you know?

11 All right. I'll ask the defendants if they have
12 witnesses other than those on the plaintiffs' list.

13 MR. KOLENICH: Wes Bellamy, Detective Steven Young.

14 THE COURT: Does anyone know those two persons?

15 MALE JUROR: Just heard of the name Wes Bellamy. My
16 number is 197.

17 THE COURT: Yes, sir.

18 MALE JUROR: I've heard the name Wes Bellamy. My
19 number is 197. Don't know him personally.

20 THE COURT: Okay. Thank you.

21 MR. JONES: Richard Hamblin, Charlottesville Police
22 Department Sergeant William Newberry.

23 THE COURT: Anyone know those two persons?

24 Does any other defendant wish to read the names of
25 witnesses they intend to call?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 All right. That concludes the portion of the voir
2 dire that the Court intends to conduct on the panel as a whole.
3 In a minute I'll ask the CSOs to guide this panel out of the
4 courtroom to the waiting room. Then I will ask each -- to
5 bring in each member of the panel, starting with the lowest
6 juror pool number for this panel, back into the courtroom
7 individually.

8 All right. Let the jury follow the marshal, if you
9 will.

10 **(Jury out, 3:34 p.m.)**

11 MS. DUNN: Your Honor, I think, if it's okay, could
12 we have a two-minute break to use the restroom?

13 THE COURT: I apologize.

14 MS. DUNN: I'm sorry. I wanted to ask if it's okay
15 to ask just for a quick restroom break.

16 THE COURT: You all would like to take a break now?

17 MS. DUNN: Just two minutes.

18 THE COURT: Take ten.

19 (Recess.)

20 THE COURT: Okay. Which juror?

21 THE CLERK: Juror 183.

22 THE COURT: 183. All right. Good afternoon. You
23 may remove your mask, if you like. Thank you.

24 Would you state your juror number?

25 FEMALE JUROR: 183.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: All right. You heard me tell the jury
2 that this case is set for four weeks, including today. Now,
3 recognizing that it is a substantial burden on you, probably,
4 to serve, do you have a hardship in serving that would be one
5 much greater than anyone else who might be called to serve?

6 FEMALE JUROR: Well, I don't know how hardship it is,
7 but I just got finished with having COVID, and I was out of
8 work 16 days. That's why my throat is like it is. Excuse me.
9 I was out 16 days, and I'm the only one that works in the
10 facility that I am in. And I've just went back to work this
11 past week. And I don't get paid if I don't work. And I'm
12 taking care of a grandson. So it's pretty hard.

13 THE COURT: Okay. All right. I'm going to excuse
14 you. I think you have a sufficient excuse. Thank you for
15 coming, and you may leave.

16 FEMALE JUROR: Okay. Thank you.

17 THE COURT: Who is the next one?

18 THE CLERK: 185.

19 THE COURT: All right. Sir, you may remove your
20 mask, if you like.

21 You heard me tell the jury that this case is
22 scheduled to last four weeks, including today. Now,
23 recognizing that that's a burden on everyone, and would be on
24 you, but would it cause a hardship for you that is -- you feel
25 is much greater than it might be for the average person who is

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 called to serve?

2 MALE JUROR: No, sir.

3 THE COURT: Okay. You expressed some concerns about
4 the COVID situation. And I outlined for you, for the jury when
5 they came in, what we were doing to ensure -- we can't ensure
6 anything, but what we're trying to do to mitigate the risk of
7 anyone being exposed to COVID while they're serving. Does that
8 alleviate any of your concerns?

9 MALE JUROR: Yes, sir.

10 THE COURT: Do you think you could serve and not be
11 distracted by a concern about COVID as long as we comply with
12 what we have agreed to?

13 MALE JUROR: Yes, sir.

14 THE COURT: All right. In one of the questions, you
15 were asked, "Under the law, the facts at issue in the trial are
16 for the jury" -- "the facts at issue in trial are for the jury
17 to determine. The law applicable to the allegations in the
18 case is something which the Court will instruct you. You are
19 required to accept the law as the judge explains it to you,
20 regardless of any opinions you might have as to what the law
21 ought to be. Would you have any difficulty following
22 instructions if it was at odds with your own views of what the
23 law should be?" And you answered "yes" to that.

24 I'd like to find out how you feel about -- if you
25 could -- if you could set aside any preconceived notions and

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 opinions you might already have.

2 MALE JUROR: Yes, sir, I would try, but being from
3 the surrounding area, I am aware of the Charlottesville riots
4 and what took place. And I have formed my own opinions of it,
5 but I would try to keep a clear mind about it.

6 THE COURT: All right. How sure are you that you
7 could set aside any preconceived feeling or --

8 MALE JUROR: I would find it difficult, but I would
9 try within every means I have. But I would find it very
10 difficult. I use the expression it's sort of like having an
11 anti-vaxxer on a jury about giving shots. It would be hard to
12 change my mind.

13 THE COURT: Okay. Any questions?

14 MR. KOLENICH: Yes, Your Honor.

15 THE COURT: In one of your questions you say that
16 you're very concerned about prejudice against Jewish persons,
17 black persons, and Hispanics, but not against white persons.
18 Can you explain why that is?

19 MALE JUROR: Because I don't consider being white a
20 minority. I do not consider white as a victim.

21 THE COURT: Were there any more questions?

22 Let me ask you this: Do you believe that all persons
23 have a right to demonstrate, irrespective of their beliefs?
24 That would be, say, on one end white nationalists, and on the
25 other side persons having diametrically opposed views?

1 Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: Truthfully, I don't believe in any
2 demonstrations toward hate as acceptable.

3 THE COURT: What groups particularly do you associate
4 with hate?

5 MALE JUROR: KKK, white nationalists.

6 THE COURT: Anything else?

7 MS. DUNN: Yes, Your Honor.

8 THE COURT: Do you understand that if you are
9 selected to serve on the jury, as a member of the jury, you
10 would be required to follow the law as I instruct you and apply
11 it to the evidence in the case?

12 MALE JUROR: Yes, sir.

13 THE COURT: If the plaintiffs fail to prove their
14 case and do not prove the defendants violated the law, will you
15 follow the law as the Court instructs you?

16 MALE JUROR: Yes, sir, I will.

17 THE COURT: Do you know of any reason you could not
18 serve on this jury and render a verdict fair to both the
19 defendant and the plaintiff?

20 MALE JUROR: I would try with all my means and heart
21 to judge fairly.

22 THE COURT: All right. Nothing else. Thank you,
23 sir. You may go back with the marshal.

24 And give him the number for the next one.

25 THE CLERK: 186.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: All right, sir. Would you give us your
2 jury number?

3 MALE JUROR: 186.

4 THE COURT: You heard me state that the case will
5 last for four weeks, including today. Now, we know that's a
6 burden on anyone, but is the hardship that it might cause you
7 one that you think is greater than it would cause the average
8 person called to serve?

9 MALE JUROR: I can't say it is.

10 THE COURT: All right. You made reference to knowing
11 several of the -- or recognizing several of the names. What do
12 you know -- how do you associate their names?

13 First, who did you say you knew?

14 MALE JUROR: Yes, sir. I think I identified --
15 Mr. Cantrell [sic] and Mr. Spencer were the two that stuck out.
16 I think if you consume the modern media and the news, those
17 names do make their appearances in the press.

18 THE COURT: Okay. You actually participated in the
19 Unite the Right; is that correct?

20 MALE JUROR: Absolutely not, no.

21 THE COURT: Sir?

22 MALE JUROR: No, I did not.

23 THE COURT: You did not.

24 MALE JUROR: No, sir. That might be a handwriting
25 error. May I explain?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Yeah. I mean, you were there? I don't
2 mean you --

3 MALE JUROR: No, sir, I was not. If I can explain --

4 THE COURT: Yes.

5 MALE JUROR: So I think if you're reading off my
6 questionnaire -- is that what that is?

7 THE COURT: Yes.

8 MALE JUROR: So there was a -- I would probably say a
9 peace and wellness response to the Unite the Right march at UVA
10 about two or three days afterwards, and I participated in that.
11 So if anything, it would be a counter to the -- to Unite the
12 Right.

13 THE COURT: All right.

14 MALE JUROR: Does that make sense?

15 THE COURT: Yes.

16 All right. Do you know of any reason you could not
17 serve on a jury in this case and render a verdict that is fair
18 to both the plaintiffs and the defendants based solely
19 according to the law and the evidence?

20 MALE JUROR: Yeah, I -- I anticipated having a
21 question something like that. It's weighted on me quite a bit,
22 and even now I may not be able to answer that in a way that's
23 satisfactory to you, sir.

24 I guess I can only say that I want to be very fair
25 and respectful to the law and to justice to the plaintiffs and

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 the defendants, but I think in my heart of hearts I'd have to
2 acknowledge that, as a member of this community, the events in
3 August really left me with some emotional scar tissue. I'm
4 not -- as much as I would like to be able to say I can overcome
5 that, I honestly can't look you in the eye and say that I can.

6 THE COURT: Right. Thank you. Any questions from
7 the plaintiff?

8 All right. I don't feel that I need to read these
9 questions to him. I'm going to excuse him for cause.

10 Thank you, sir. You may leave. Appreciate you being
11 here.

12 MALE JUROR: Thank you, sir.

13 THE COURT: What's the next number?

14 THE CLERK: 189.

15 THE COURT: All right, sir, you may take your mask
16 off if you like. You may remove your mask.

17 State your juror number.

18 MALE JUROR: Sir?

19 THE COURT: Your number.

20 THE CLERK: Your juror number.

21 MALE JUROR: Oh, 189.

22 THE COURT: You heard me state that this case is set
23 for four weeks starting today. I know that might be a burden
24 on you, to serve for four weeks, but would it be a burden on
25 you that would be greater than any other person who might be

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 called to serve?

2 MALE JUROR: Not that I can see.

3 THE COURT: All right. In your questionnaire, the
4 question was asked, under -- "the facts at issue in this trial
5 are for the jury to determine. The law applicable to the
6 allegations in the case is something to which the Court will
7 instruct you. You are required to accept the law as the judge
8 explains it to you, regardless of any opinions you might have
9 as to what the law is or should be. Would you have any
10 difficulty following that instruction if it was at odds with
11 your own views as to what the law should be?" You answered
12 that question "yes."

13 And you state: "It is for a jury to decide if the
14 law itself is just." Is that your belief?

15 MALE JUROR: That's what I was taught in criminal
16 justice class.

17 THE COURT: Well, if I were to tell you that when
18 you're a juror in a case, you get the law from the judge who is
19 telling you what the law is -- not the judge's opinion, but
20 what the law is -- and it's your duty to follow the law, would
21 you do that, even though it ran counter to your beliefs?

22 MALE JUROR: Yes, sir. I guess I wouldn't have any
23 choice.

24 THE COURT: All right. You also said that the
25 counter-protesters should have stayed home, I believe. Is

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 that --

2 MALE JUROR: Yes, sir.

3 THE COURT: Is that opinion so strong that you would
4 be unable to set it aside and render an impartial judgment
5 based solely on the evidence and the law in the case?

6 MALE JUROR: I was just stating it. I think that
7 they were trying to cause trouble.

8 THE COURT: All right. Okay. Any questions?

9 MR. CANTWELL: I do. Just a moment.

10 Never mind.

11 THE COURT: Plaintiff have any questions?

12 MS. DUNN: Yes, Your Honor.

13 (Pause.)

14 THE COURT: All right, sir. I'm going to excuse you
15 for cause. Thank you. You may leave.

16 THE CLERK: 190.

17 THE COURT: Have we told all of the jurors we're only
18 to go through this panel today, hopefully, and we'll only have
19 two panels tomorrow, three and four?

20 I hope we can get through. I'm not sure we will.

21 Sir, you may remove your mask, if you like.

22 State your number, your juror number.

23 MALE JUROR: 190.

24 THE COURT: Okay. You heard me state that this case
25 is set for trial for four weeks, starting today. Now, that may

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 be a hardship on you, but would your hardship be any greater
2 than the average person who would be called to serve?

3 MALE JUROR: No.

4 THE COURT: Okay. Do you know of any reason you
5 could not serve as a juror in the case and render a verdict
6 fair to both the plaintiffs and the defendants?

7 MALE JUROR: No.

8 THE COURT: Are there any questions?

9 You stated that you knew Richard Spencer, as he was
10 the leading figure at the rally. Do you feel that you have any
11 bias for or against Mr. Spencer?

12 MALE JUROR: I don't have any bias because I've only
13 heard things from random people. I've never really done any of
14 my own research on him.

15 THE COURT: Are the things you heard flattering or
16 unflattering?

17 MALE JUROR: I would say both flattering and
18 unflattering. Again, I didn't really do any research of my own
19 to confirm or --

20 THE COURT: If you are selected to serve on the jury,
21 you will be asked, as will the other jurors, to judge the
22 facts. I will give you -- tell you what the law is. You will
23 have to apply the law and the facts --

24 MALE JUROR: Yes.

25 THE COURT: -- to the facts. Are you capable of

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 doing that?

2 MALE JUROR: I am.

3 THE COURT: Can you set aside anything someone has
4 told you about Mr. Spencer and decide the case solely on what
5 you hear that he may or may not have done here in the
6 courtroom?

7 MALE JUROR: Yes.

8 THE COURT: All right. Do you have any opinion about
9 who was responsible for any violence at the Unite the Right
10 rally?

11 MALE JUROR: I do not have any opinion on it.

12 THE COURT: In your questionnaire, you answered that
13 you were concerned about racism, but not racism against white
14 people. Is it your view that white people cannot be victims of
15 racism?

16 MALE JUROR: It's my view that white people cannot be
17 victims of racism as we've seen in this country in the past, if
18 that makes sense.

19 THE COURT: All right.

20 MR. CANTWELL: Judge, I gave you a question for the
21 wrong juror. I apologize.

22 MR. SPENCER: Your Honor, Mr. Cantwell made a
23 mistake. He sent up a question for the next juror.

24 MR. CANTWELL: It's the one in the blue ink. That's
25 mine.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: The blue ink?

2 MR. CANTWELL: That's mine. It's for the next one.

3 THE COURT: Okay.

4 Have you talked to anyone in Charlottesville who
5 knows Mr. Spencer personally?

6 MALE JUROR: No.

7 THE COURT: All right. Any other questions?

8 MS. DUNN: No, Your Honor.

9 THE COURT: All right. You may retire back to the
10 jury room.

11 Is anyone going to raise a for-cause challenge for
12 this juror?

13 MR. CANTWELL: I will if nobody else is going to.
14 Christopher Cantwell.

15 MR. SMITH: What was the question?

16 MR. CANTWELL: A cause challenge.

17 I'd like to raise a cause challenge for that juror.
18 He said that he doesn't believe that whites can be victims of
19 racism, and I think that's a pretty extreme view on race.

20 THE COURT: Well, that's -- in spite of that, I don't
21 think that disqualifies --

22 MR. SMITH: Your Honor, that's classic critical race
23 theory talk, which is just an -- that is an anti-white academic
24 discipline that should not be entertained.

25 THE COURT: Okay --

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MR. CANTWELL: The juror was also missing large
2 portions of his survey, I believe.

3 THE COURT: I think he's qualified to serve.

4 MR. SPENCER: I would offer just one concern. His
5 representation of the Antifa movement was they fight a
6 far-right movement. It seemed to be a kind of endorsement of
7 Antifa.

8 Now, again, I'm not going to bring up Antifa
9 regarding the plaintiffs, as I've said, but it struck me as not
10 a balanced perception of Antifa, certainly not one that most
11 people share. He seemed to be almost kind of leaning towards
12 their side.

13 THE COURT: Well, he said that he could try the case
14 according to the law and evidence. I don't think that he's
15 disqualifed.

16 MR. SPENCER: Okay.

17 THE COURT: Do we have the next one coming?

18 THE CLERK: 194.

19 THE COURT: All right, sir. You may take your mask
20 off, if you like.

21 You heard me state this case was going to last four
22 weeks. I know that's maybe a hardship for some people, but
23 would it be a hardship on you that would be probably more
24 extreme than it might be for the average juror?

25 MALE JUROR: No, it would not be. I'm retired.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: All right. Do you have any health
2 condition that would prevent you from serving as a juror or
3 something that would keep you from being able to sit for an
4 hour or hour and a half without a break?

5 MALE JUROR: No.

6 THE COURT: And the last question on the
7 questionnaire, I've got 70 here, was not answered, but under
8 the law, the facts at issue in the trial are for the jury to
9 determine. The law applicable to the allegations in the case
10 is something to which the Court will instruct you. You are
11 required to accept the law as the judge explains it to you
12 regardless of any opinions you might have as to what the law
13 should be. Would you have any difficulty following that
14 instruction if it's at odds with your own views of what the law
15 should be?

16 MALE JUROR: No.

17 THE COURT: All right. In question 72 you said you
18 would not be able to set aside preconceived opinions you might
19 have about the Unite the Right rally and base your decision
20 solely on the evidence in the case. Is that still your view?

21 MALE JUROR: Yes, it is.

22 THE COURT: All right. Are there any questions?

23 All right, sir. I'm going to excuse you. You may
24 leave. Thank you.

25 THE CLERK: 196.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: For the record, I think the views he
2 expressed were so strong there would be no way that he could be
3 rehabilitated.

4 Would you state your jury number?

5 MALE JUROR: 196.

6 THE COURT: Okay. You heard me tell you and the
7 other jurors that the case would last for four weeks, and that
8 could be a hardship on anyone. But is there any reason that it
9 would be a greater hardship on you than the average person
10 called to serve on a jury?

11 MALE JUROR: Yes, Your Honor. There is --

12 THE COURT: Take your mask off, if you don't mind.

13 MALE JUROR: Okay, sure. So I'm part of a two-person
14 architecture firm and we have a number of projects. We each
15 handle our own projects and do virtually all the work for those
16 projects including client contact, drawings, design, so forth.
17 I've currently got five projects going right now that every day
18 I'm not in the office is a day the project gets delayed. We've
19 got time commitments for each of those projects. So it's a
20 hardship for me to be away for that length of time for sure.

21 THE COURT: All right. It says that you -- you have
22 attended a number of rallies to protest the Unite the Right
23 rally in August of 2017, and that your daughter participated in
24 Black Lives Matter protests in New Haven. Do you think that it
25 would be hard for you to serve as a juror in this case, and if

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 the defendants -- if the plaintiffs failed to prove beyond a
2 reasonable doubt -- I'm sorry, strike that -- by a
3 preponderance of the evidence that the defendants conspired to
4 come to Charlottesville and commit racially motivated
5 violence --

6 MALE JUROR: Yeah, just to clarify, I wouldn't say I
7 participated in a number of rallies, but I've participated in
8 some. I've been to political rallies. We had a practice
9 downtown and were pretty seriously impacted by everything that
10 happened leading up to August 11th and 12th, and the things
11 that followed. I knew people, had friends that were in the
12 crowd that was hit by the rampaging car, and one was seriously,
13 seriously hurt. So I can't say it's easy for me to forget
14 that, to -- but I would do my best.

15 THE COURT: All right. Any questions?

16 All right, sir, I'm going to excuse you.

17 MR. CANTWELL: Oh, never mind.

18 THE COURT: Yes.

19 MR. SMITH: Nothing, Your Honor. Sorry about that.
20 Nothing.

21 THE COURT: Who was --

22 MR. SMITH: Mr. Cantwell. It's nothing, Your Honor.

23 THE COURT: I thought Ms. Moody had her arm up.

24 MR. KOLENICH: No questions, Your Honor.

25 THE COURT: All right. Thank you, sir, for being

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 here.

2 THE CLERK: 197.

3 THE COURT: I'm going to -- he's excused for cause
4 and economic necessity.

5 All right, sir. You may remove your mask, if you
6 would, and state your juror number.

7 MALE JUROR: 197.

8 THE COURT: All right. You heard me tell all the
9 jurors that this trial is set for four weeks, starting today.
10 Now, recognizing that it's a hardship on most people, would the
11 hardship on you be more extreme than it would be for the
12 average juror?

13 MALE JUROR: It would probably be the same.

14 THE COURT: You say it would probably be the same?

15 MALE JUROR: It would be the same, yes, sir.

16 THE COURT: All right. And do you know of any reason
17 you could not serve on the jury and render a verdict fair to
18 both the plaintiff and the defendants --

19 MALE JUROR: No, sir.

20 THE COURT: -- based solely according to the law and
21 the evidence?

22 MALE JUROR: No, sir.

23 THE COURT: All right. Question number 42 on the
24 questionnaire that we sent out was that this case involves
25 allegations against the defendants identified as organizers and

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 promoters of the Unite the Right rally in Charlottesville on
2 August 11 through 12, 2017. Plaintiffs identified as private
3 citizens who attended the Unite the Right rally as
4 counter-protesters, that the defendants were responsible for
5 the injuries that the plaintiffs suffered during Unite the
6 Right. Have you heard or read anything about this case? And
7 you said you had heard the news reports.

8 Based upon what you might have heard or seen, have
9 you come to any conclusion about any of the issues that might
10 be involved in this case?

11 MALE JUROR: I haven't came to any conclusions.

12 THE COURT: There were several questions that were
13 apparently left off your questionnaire. It says: Would you be
14 able to set aside preconceived opinions, if any, you may have
15 about the Unite the Right rally, this case, and the parties
16 therein, and reach a decision based solely upon the evidence
17 you hear at trial in accordance with the law as instructed by
18 the Court? And you answered "yes" -- I'm sorry. I don't have
19 your answer. I'm reading another form.

20 Can you -- can you set aside any preconceived notions
21 or opinions you have?

22 MALE JUROR: I really didn't have any opinions, to be
23 honest, just because everyone see situations in their own eyes
24 their own way. So to me, to each and everyone's choices, what
25 they want to do is their choice. So I didn't really have an

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 opinion for that question.

2 THE COURT: Is there anything you think the Court
3 should know that might influence your ability to fairly and
4 impartially judge the evidence presented in this case and apply
5 the law as instructed by the Court? And you -- I mean, could
6 you do that?

7 MALE JUROR: Could you repeat that, please?

8 THE COURT: Is there anything you think the Court
9 should know that might influence your ability to fairly and
10 impartially judge the evidence presented in this case and apply
11 the law as instructed by the Court?

12 MALE JUROR: No, sir.

13 THE COURT: Are you sensible of any bias or prejudice
14 against either the plaintiffs or the defendants in the case?

15 MALE JUROR: No, sir.

16 THE COURT: All right. Are there any questions?

17 MR. CANTWELL: I have questions.

18 THE COURT: All right. Do you believe that white
19 nationalists should be allowed to hold public demonstrations?

20 MALE JUROR: I think any group that want to hold
21 something that get a legal -- get legal -- what do I want to
22 say? Anyone that get legal written permission from any state
23 or government body to do something, they are able to do it.

24 THE COURT: All right. In your survey you indicated
25 you were very concerned about racism, but not racism against

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 white people. Is it your view that white people cannot be the
2 victims of racism, or that they deserve to be?

3 MALE JUROR: Well, I think everyone can be a victim
4 of racism, no matter the color. And it happens every single
5 day.

6 THE COURT: All right. Thank you. Any other
7 questions? Is that all?

8 Okay. Thank you, sir. Appreciate it.

9 All right. That juror is qualified, or not
10 discharged for cause.

11 THE CLERK: 203.

12 THE COURT: All right. You may take your mask off,
13 please. Would you state your number as a juror? State your
14 number -- juror number.

15 MALE JUROR: What was that?

16 THE COURT: The jury number, the number they --

17 MALE JUROR: Oh, 203.

18 THE COURT: 203. Okay. You heard me state that the
19 case is supposed to last four weeks. And we know it's a
20 hardship for anyone to be away that long, but is it a
21 particular serious hardship for you to serve four weeks?

22 MALE JUROR: I have a problem hearing you. What was
23 that?

24 THE COURT: Would it be extremely hard for you to
25 serve four weeks? Would it be extremely hard for you to serve

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 as a juror for four weeks?

2 MALE JUROR: I think so. I'm self-employed and so I
3 wouldn't be able to have, you know, my workers wouldn't be able
4 to work and I wouldn't be able to, you know, have an income.

5 THE COURT: What is your business?

6 MALE JUROR: I'm -- construction.

7 THE COURT: And how many employees do you have?

8 MALE JUROR: Just one.

9 THE COURT: Can that person work without you?

10 MALE JUROR: No.

11 THE COURT: What are you, in general --

12 MALE JUROR: Handyman type general construction. I'm
13 the only -- that's my helper. I do all the work.

14 THE COURT: Okay. How large is your family?

15 MALE JUROR: It's my wife and me and my daughter and
16 her son. She's a stay-at-home mom. She lives with us.

17 THE COURT: Are they all dependent upon you?

18 MALE JUROR: Right, at this point, because she
19 doesn't have a job, yeah.

20 THE COURT: Okay.

21 Have you formed any opinion about any of the issues
22 that might come up in this case about the Unite the Right
23 rally?

24 MALE JUROR: I guess I have. I've watched all the
25 news. I was here when it happened in town. So I sort of have

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 come to some conclusions of what happened.

2 THE COURT: In one of your questions you were asked
3 could you set aside any preconceived opinions, if any, you may
4 have about the Unite the Right rally, and this case and the
5 parties therein, and reach a decision based solely on the
6 evidence you hear at trial in accordance with the law as
7 instructed by the Court. And you answered that no, you could
8 not set aside your preconceived opinions.

9 MALE JUROR: Yeah, I just feel that, you know, that
10 it just was a horrible incident, you know, and that I think
11 that -- I just think that -- that they were wrong, you know --
12 you know and --

13 THE COURT: Who do you think was wrong?

14 MALE JUROR: The protesters, you know, the Unite the
15 Right guys, to even be there. I just felt that they did
16 violate Charlottesville, you know. They just took advantage of
17 the situation, and I just don't know if it was all handled
18 right. It just all felt bad, the whole setup.

19 THE COURT: All right. And you think it would be
20 hard to set aside that opinion?

21 MALE JUROR: Well, it's the opinion I have. And it's
22 what I -- because I watched all the news and things and what
23 was going on. There were friends that were there, and what
24 they told me, it just -- I just -- that's the opinion that I
25 developed. I don't know if I could set it aside because it was

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 pretty engrained.

2 THE COURT: If you were selected to serve on a jury,
3 you would be required -- you would be told, instructed that you
4 must follow the law whether you agree with it or not, and then
5 you would have to find the facts from the evidence only that
6 you heard in the courtroom. Could you do that?

7 MALE JUROR: I believe I could do that, yes. I would
8 go by what I -- what I heard and what's presented to me.

9 THE COURT: Okay. All right. Any questions?

10 MR. SPENCER: Yes, Judge.

11 THE COURT: All right. On Questions 16 and 17 you
12 did not state who you admired most and least. Since that time,
13 have you decided?

14 MALE JUROR: No. I don't seem to have an opinion on
15 that.

16 THE COURT: Okay. In your questionnaire you
17 indicated you were concerned about racism, but not racism
18 against white people. Can you explain your view on that?

19 MALE JUROR: What was that again?

20 THE COURT: I think in the questionnaire one of the
21 questions was: Are you concerned about racism? And it listed
22 groups of persons --

23 MS. DUNN: Your Honor --

24 MR. SMITH: I think you may have the wrong -- I have
25 the wrong --

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MR. CANTWELL: Did I make a mistake? That was my
2 question.

3 THE COURT: All right. That's the wrong question.

4 MR. SMITH: Let me double-check.

5 MR. CANTWELL: 206?

6 MR. SMITH: No. It's 203.

7 MR. CANTWELL: Oh, I'm very sorry. I have made a
8 mistake. I'm very sorry. And the other question that you have
9 from me is also wrong. I apologize.

10 THE COURT: The question in this case is whether
11 these defendants conspired to commit racially motivated
12 violence. Can you judge that question based on the evidence
13 and the law as I instruct?

14 MALE JUROR: Yes.

15 THE COURT: All right. What I want to go back to,
16 the hardship that it might be for you to serve on the jury. I
17 mean, how critical would it be for you to serve?

18 MALE JUROR: Well, because I just got over COVID
19 three weeks ago, but I was sick for over a month. So I didn't
20 work that entire time. And then I since then even hardly
21 worked, because I've been very fatigued and tired from having
22 COVID for almost 20 days. I haven't really worked in the last
23 two months. So another month would really -- really hurt
24 pretty bad.

25 THE COURT: Okay. All right. Thank you. You may go

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 back.

2 THE CLERK: It will be 206.

3 THE COURT: All right. I think his hardship is a
4 real problem here. It's marginal -- his feelings about the
5 case are pretty strong, but I think he has a genuine hardship,
6 and I'm going to excuse him based on the hardship.

7 All right, sir, if you would remove your mask.

8 MALE JUROR: Okay.

9 THE COURT: All right, sir. As I told you earlier,
10 this case is set to be tried for four weeks, starting today.
11 Now, does that present any hardship for you that wouldn't be
12 common for most people who are called upon to serve?

13 MALE JUROR: I could make it work, but I am a small
14 business owner. So it would be difficult, but I could do it.

15 THE COURT: What is your business?

16 MALE JUROR: It's a software development company.

17 THE COURT: Do you know of any reason you could not
18 serve as a juror in the case and render a verdict fair to both
19 the plaintiffs and the defendants based solely according to the
20 law and the evidence?

21 MALE JUROR: Yes, I think I could do that.

22 THE COURT: In this case, the main case is the
23 plaintiffs' claim that the defendants conspired by coming to
24 Charlottesville to engage in racially motivated violence.
25 That's the issue; irrespective of what people might believe,

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 that is the main question.

2 Can you set aside any other feelings you might have
3 and try the case and reach a decision on that issue, setting
4 aside any preconceived opinions?

5 MALE JUROR: I think I could. I feel like I have
6 been influenced by the media. I've read things. I've seen
7 things. So obviously I've got that baggage. But I think,
8 depending on how the case is presented, I would consider things
9 objectively.

10 THE COURT: Would you have any hesitation about
11 finding for one of the parties if -- say, if the plaintiffs
12 fails to prove by a preponderance of the evidence that the
13 defendants are -- did the acts they're accused of, could you
14 find for the defendants? And, vice versa, if they prove by a
15 preponderance of the evidence that the defendants did commit
16 the acts claimed, could you find in favor of the plaintiffs?

17 MALE JUROR: In favor of the defendants or the
18 plaintiffs?

19 THE COURT: Well, did I misspeak?

20 MALE JUROR: I feel like if the plaintiffs don't do a
21 good enough job presenting the evidence, I'd have to be -- to
22 be fair, I think I would have to go with the defense. I hope
23 that they wouldn't do that, though.

24 THE COURT: Okay. Are you saying -- what do you
25 mean, you hope that they wouldn't do that?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: I would think that the plaintiffs would
2 present the case fairly well and that I wouldn't have to be in
3 a difficult position to make a decision, but if they didn't and
4 the defense did a good job making their case, to be fair, I'd
5 have to go with the defense.

6 That's what you want us to do, right?

7 THE COURT: Right. But I want to be sure that --

8 MALE JUROR: Yes.

9 THE COURT: -- you're not favoring one over the
10 other, and hoping one is going to win and not the other.

11 MALE JUROR: I am. But I'm saying that if the
12 plaintiffs don't do a good enough job making their case, to be
13 fair, I would have to go with the defense.

14 THE COURT: All right. Thank you. Any questions?

15 At this point, have you formed an opinion as to who
16 was responsible for the violence at the events?

17 MALE JUROR: Totally.

18 THE COURT: All right. Do you believe white
19 nationalists should be allowed to hold public demonstrations?

20 MALE JUROR: I suppose they have a right to. I don't
21 believe in that at all, but it is a right and I do believe in
22 sticking up for people's rights.

23 THE COURT: In your opinion, you indicated that you
24 were very concerned about racism, but not racism against white
25 people. Can you explain that?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: I really don't even know what that is,
2 racism against white people.

3 THE COURT: All right. Do you feel that your
4 daughter's concerns over racial justice might affect your
5 opinion?

6 MALE JUROR: I think they're consistent with my
7 beliefs, but again, like I said, I feel like fair is fair. And
8 if this is a poorly presented case, then I'm not going to -- I
9 can't -- I can't in my conscience vote just because I believe a
10 certain group did what they did.

11 THE COURT: One final question, I think probably
12 covered, but: If the plaintiffs don't meet their burden of
13 proof, will you follow the law and find for the defendants,
14 regardless of what you hold?

15 MALE JUROR: Yes.

16 THE COURT: All right. Thank you, sir.

17 Are they all the questions?

18 MS. DUNN: Sorry, Your Honor.

19 THE COURT: Thank you. You may go back.

20 THE CLERK: 207, Dan.

21 THE COURT: We'll hear argument on that juror later.

22 MR. SMITH: Later? Is that what you said?

23 THE COURT: Yes.

24 Have the next one come in.

25 When you hand up a question, please write the name of

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 the party who is proposing the question.

2 All right, sir, you may take your mask down.

3 State your number as a juror.

4 MALE JUROR: 207.

5 THE COURT: You heard me state that this case is set
6 for trial for four weeks, starting today. I know this might be
7 a burden on you, but would the burden on you be any greater
8 than it would be for any other juror?

9 MALE JUROR: I didn't get that, sir.

10 THE COURT: Would it be any greater hardship for you
11 to serve than it would be for somebody else?

12 MALE JUROR: No, it wouldn't.

13 THE COURT: Okay. On your questionnaire, the
14 question asked at Number 70, you did not answer.

15 MALE JUROR: What was that?

16 THE COURT: There are a number of questions you
17 didn't answer, but the question is: Under the law, the facts
18 at issue in the trial are for the jury to determine. The law
19 is for the judge to tell you what it is. You are required to
20 accept the law as the judge explains it to you, regardless of
21 any opinions you might have on what the law is or should be.
22 Would you have any difficulty following that instruction if it
23 was at odds with your own views of what the law should be?

24 MALE JUROR: No, I wouldn't have no difficulties.

25 THE COURT: All right. Question 71: Do you have any

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 moral, religious, or personal beliefs which would prevent you
2 from rendering a fair and impartial verdict in this case based
3 solely on the evidence you will hear in the courtroom and the
4 Court's instructions on the law?

5 MALE JUROR: Based solely on the evidence, I wouldn't
6 have, no.

7 THE COURT: All right. Would you be able to set
8 aside preconceived opinions, if any, you may have about the
9 Unite the Right rally, this case, and the parties therein, and
10 reach a decision based solely on the evidence you hear at trial
11 in accordance with the law as instructed by the Court?

12 MALE JUROR: No. Because I don't attend no rallies.

13 THE COURT: Okay. Is there anything you think the
14 Court should know that might influence your ability to fairly
15 and impartially judge the evidence presented in this case and
16 apply the law as instructed by the Court?

17 MALE JUROR: No. I have none.

18 THE COURT: All right. Are there any questions?

19 MR. CANTWELL: I have one, Judge.

20 THE COURT: There was a question about, who are three
21 public known people you admire most, and then three that you
22 admire least. Is there any person that you particularly
23 admire?

24 MALE JUROR: Is there any person who I particularly
25 admire? Mostly was my mother and father.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: All right. What about anyone you don't
2 admire?

3 MALE JUROR: No.

4 THE COURT: All right.

5 MALE JUROR: I don't judge nobody.

6 THE COURT: Any other questions?

7 All right. Can you judge this case fairly according
8 to the law and to the evidence?

9 MALE JUROR: Yes, I could.

10 THE COURT: All right. Thank you, then. You may
11 retire.

12 THE CLERK: Dan, 210.

13 THE COURT: Would there be any challenge for cause
14 for that juror that just left? Anyone challenge him for cause?

15 MR. CANTWELL: I'm not challenging him for cause, but
16 I just wonder -- I was under the impression I had handed you a
17 question, and I'm wondering if you intentionally declined to
18 ask it or if something happened.

19 THE COURT: What was the question?

20 MR. CANTWELL: I wanted to ask: Do you believe white
21 nationalists should be allowed to hold public demonstrations?

22 THE COURT: All right, sir. State your juror number.

23 MALE JUROR: 210.

24 THE COURT: All right, sir. I have told you and the
25 other jurors that the case is expected to last four weeks,

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 starting today. Recognizing that that might be a burden on you
2 as well as other people, would the burden on you be any greater
3 than it might be on the average person who is called to serve
4 on a jury?

5 MALE JUROR: No, sir.

6 THE COURT: Okay. Do you have any physical problem
7 that would prevent you from sitting for an hour, hour and a
8 half, if that was required as a juror?

9 MALE JUROR: No, sir.

10 THE COURT: Do you have any other physical limitation
11 that might prevent you from serving?

12 MALE JUROR: No, sir.

13 THE COURT: You indicated you have -- of course,
14 don't want to wear a mask, and none of us do, but the Court is
15 going to obviously require at this point that all jurors wear a
16 mask. Are you willing to abide by the Court's order and wear a
17 mask covering your nose and mouth while you're serving?

18 MALE JUROR: I've done okay today, sir. As long as I
19 can suck on a peppermint or something, it's been helping.

20 THE COURT: Okay. Were there any other matters we
21 need to bring up?

22 All right. Do you know of any reason you couldn't
23 serve as a juror in this case and render a verdict that's fair
24 to both the plaintiffs and the defendants?

25 MALE JUROR: No, sir.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Okay. Any questions?

2 MS. DUNN: Yes, Your Honor.

3 (Pause.)

4 THE COURT: With regard to the wearing of the mask,
5 do you think -- you'll have to wear it over your nose -- I
6 don't want you to wear it now --

7 MALE JUROR: Oh. Okay.

8 THE COURT: -- but you will be asked to wear it over
9 your nose and mouth. Now, can you do that?

10 MALE JUROR: I've been able to do it today as long as
11 I was able to take some regular breaks and it's open. And it's
12 more the confinement. If I feel that there's a lot of people
13 around me in waiting rooms and such, that's when I've had panic
14 attacks.

15 THE COURT: Apparently, in Question 29 you said you
16 were mistreated on account of your race, referring to an
17 incident while you were in high school. You were assaulted by
18 a Samoan football player?

19 MALE JUROR: Yes, sir, I was.

20 THE COURT: Can you tell us any more about that?

21 MALE JUROR: Just in Hawaii, being in the military
22 and so forth, there was a lot of resentment from some of the
23 natives, the islanders there; the locals, we called them. We
24 learned really quickly that you had to kind of watch out, keep
25 your distance and not offend people, but the football players

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 especially liked to beat up on skinny white kids like myself.

2 And they -- come to find out, they had an official
3 "hit a haole" day, which is what they refer to non-locals, and
4 on that day I was walking through the hall and one of the big
5 offensive linemen clock me in the jaw and so forth. Of course,
6 I ran off, and he got in trouble, but, you know, I was -- that
7 was kind of a common thing. You would get hit if you weren't
8 paying attention.

9 THE COURT: Okay. Is there anything about that
10 experience you think would influence your ability to serve as
11 an impartial juror in this case?

12 MALE JUROR: No.

13 THE COURT: All right. And you state that you view
14 Black Lives Matter extremely unfavorably. Can you say why?

15 MALE JUROR: The leader, the founder of that movement
16 is quoted as saying that they are all trained Marxists, and so
17 while I don't disagree with the sentiment, and in fact I
18 support the meaning of those words, the organization itself, I
19 think there is a distinction to be made. So if the leader is
20 saying they're trained Marxists, then as an American and
21 somebody who believes in our Constitution and freedom, I am
22 diametrically opposed to Marxism. So that's why I would say
23 that about Black Lives Matter.

24 THE COURT: All right. Thank you. Any other
25 questions?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MS. DUNN: Your Honor, we may have another question.

2 THE COURT: Do you already have a view about who was
3 responsible for violence at the Unite the Right rally, given
4 your views about Antifa?

5 MALE JUROR: As I think I said on there, all I kind
6 of remember from that was that there were two sets of extremist
7 groups. And I didn't really pay attention to, or at this point
8 I don't even remember the details. All I know is that there
9 was some violence and that there were two distinct groups of
10 actors, if you would, and bad things happened.

11 THE COURT: What are your views on white supremacy?

12 MALE JUROR: It's wrong. But you have a right to be
13 a white supremacist in this country. We may not agree with
14 everything that everybody does or thinks, but that's just the
15 way our country -- if you want to be a fool, you can be a fool.
16 So personally, no, I don't agree with that, but there's a right
17 to be a white supremacist.

18 THE COURT: Okay. Thank you.

19 If the plaintiffs prove by a preponderance of the
20 evidence that the defendants conspired to commit racially
21 motivated violence, could you find for the plaintiffs?

22 MALE JUROR: Absolutely.

23 THE COURT: If you found the plaintiffs had met their
24 burden with regard to one or more defendants, could you
25 separate that view from the other defendants for whom the

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 burden has not been met?

2 MALE JUROR: Absolutely.

3 THE COURT: Okay. Thank you.

4 MS. DUNN: Your Honor, I have just one.

5 THE COURT: If you hear counter-protesters merely
6 described as Marxists or communists, would you hold a negative
7 view of the counter-protesters, given your views on Marxism?

8 MALE JUROR: I believe in the rule of law. If
9 somebody is breaking the law, it doesn't matter what they're
10 doing. So that's all I would say about that. I don't -- if
11 somebody says somebody was doing something wrong or breaking
12 the law or what have you, then that's what I would follow. It
13 wouldn't matter to me what they were.

14 THE COURT: All right. Given your problem with some
15 anxiety, do you think you would be able to -- if selected, you
16 would be able to serve as a juror in the case throughout the
17 four weeks without difficulty?

18 MALE JUROR: I hope so.

19 THE COURT: All right. Thank you.

20 THE CLERK: 212.

21 (Pause.)

22 THE COURT: All right. Ma'am, you may take your mask
23 off.

24 What number are you?

25 FEMALE JUROR: 212.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: 212?

2 FEMALE JUROR: Yes, sir.

3 THE COURT: All right. You've heard me say that this
4 case is scheduled to last for four weeks, starting today. Does
5 that present any substantial hardship for you?

6 FEMALE JUROR: No, sir.

7 THE COURT: All right. Do you know of any reason you
8 could not serve as a juror in the case and render a verdict
9 fair to both the plaintiffs and the defendants based solely
10 upon the evidence you hear here in the courtroom and the law as
11 I instruct you?

12 FEMALE JUROR: No, sir.

13 THE COURT: All right. Have you formed or expressed
14 any opinion about any issue in the case already?

15 FEMALE JUROR: No, sir.

16 THE COURT: Are there any questions from the
17 jurors -- I mean, from the parties?

18 MR. SPENCER: Could you please give us a moment? I
19 just am now reading the questionnaire.

20 (Pause.)

21 I have no questions.

22 THE COURT: All right. Any questions?

23 MS. DUNN: No, Your Honor.

24 THE COURT: Okay. Thank you. You may retire.

25 THE CLERK: 213.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: After this I will have to call that
2 gentleman back. I failed to ask Mr. Cantwell's question.

3 MR. CANTWELL: Thank you, Judge.

4 THE COURT: All right. You may remove your mask.
5 Sir, you may remove your mask.

6 Okay. You heard me say that this trial is going to
7 last four weeks. Does that create any sort of a problem for
8 you?

9 MALE JUROR: Well, I have to check with my doctor
10 because I have such bad arthritis in my knee and my hand. And
11 I'm taking blood thinners and high blood pressure pills. So I
12 have to check with my doctor to see.

13 THE COURT: Are you able to sit for an hour, hour and
14 a half without taking a break?

15 MALE JUROR: I'm going to tell you the truth: It's
16 hard because of my knee. I have to kind of stretch it a little
17 bit and just walk around. I can only sit for a short period of
18 time.

19 THE COURT: Do you -- are you retired?

20 MALE JUROR: Kind of. They let me help out every now
21 and then, part-time.

22 THE COURT: What sort of -- you say you have to check
23 with your doctor.

24 MALE JUROR: Well, I mean -- well, to tell the truth,
25 I go back and forth to her, Dr. Dame in Orange. I just don't

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 want to miss my appointments because they help me on my
2 medication and stuff.

3 THE COURT: How often do you go to the doctor?

4 MALE JUROR: Well, it's every -- once a month at
5 first, now it's every three months, something like that; every
6 three months to get a checkup.

7 THE COURT: Okay. You said you'd have to ask your
8 doctor about serving on the jury. Is that --

9 MALE JUROR: No. No. No. No, sir. I just don't
10 want to miss my appointments with them. That's what I was
11 saying, sir.

12 THE COURT: When is your next appointment?

13 MALE JUROR: I went -- I think it was a couple months
14 ago, something like that.

15 THE COURT: Well, it's not during this jury trial?

16 MALE JUROR: No, sir.

17 THE COURT: Okay. You know, of course, that this
18 trial is about Unite the Right. And one of the questions you
19 didn't answer on this jury was that under the law the facts at
20 issue are for the jury to determine. The judge tells you what
21 the law is, and you are required to accept the law as the judge
22 explains it to you, regardless of any opinions you might have
23 as to what the law should be. Would you have any difficulty
24 following those instructions, even if it was at odds with your
25 own view as to what the law should be?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MALE JUROR: I really didn't understand.

2 THE COURT: All right. You have to follow the law,
3 whether you agree with it or not.

4 MALE JUROR: Right.

5 THE COURT: Would you -- if I instructed you on some
6 issue of law and told you you had to follow it, could you do
7 so, or would you do so, even if it runs contrary to your own
8 belief?

9 MALE JUROR: Yes, sir.

10 THE COURT: All right. Do you all have any
11 questions?

12 MR. CANTWELL: I do. Just a moment, Judge.

13 THE COURT: Would you be able to set aside any
14 preconceived opinions you may have about Unite the Right rally,
15 this case, and the parties therein, and reach a decision based
16 solely on the evidence you hear in court and the law as
17 instructed by the Court?

18 MALE JUROR: Do I have any trouble with it, sir?

19 THE COURT: Yes, could you -- first, let me ask you
20 this: Have you formed any opinion about the issues involved in
21 the Unite the Right rally as it may involve this case?

22 MALE JUROR: No, sir. I wouldn't do that.

23 THE COURT: You're saying that you have no opinion
24 about who might be at fault insofar as this case is concerned?

25 MALE JUROR: No, sir.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Did you have any opinion about who was at
2 fault in the violence that occurred at the rally?

3 MALE JUROR: No, sir.

4 THE COURT: There were a number of questions that you
5 didn't answer. Was there any particular reason you did not
6 answer those questions?

7 MALE JUROR: Well, I really didn't understand, sir,
8 at the time.

9 THE COURT: All right. You will be told that you
10 will have to decide this case separately as to each defendant,
11 and as, of course, to each plaintiff. Would the fact that you
12 believe the plaintiffs found one person at fault, one defendant
13 at fault in the case, would that make you automatically find
14 others -- other defendants at fault?

15 MALE JUROR: No, sir.

16 THE COURT: All right. Any other questions?

17 MALE JUROR: No, sir.

18 THE COURT: Thank you. All right. He may go back.
19 He's the last one, Heidi?

20 THE CLERK: Yes, Judge.

21 THE COURT: We need to bring back Number 207.

22 MS. DUNN: We have one issue after we're done with
23 the next juror to raise.

24 THE COURT: What?

25 MS. DUNN: We have one issue to raise with the Court

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 when we're in between jurors.

2 THE COURT: Sir, I neglected to ask you one of the
3 questions when you were here before. And the question is this:
4 Do you believe that white nationalists have a right to hold a
5 public demonstration?

6 MALE JUROR: Yes.

7 THE COURT: All right. Thank you, sir. That's all.

8 What's the issue?

9 MS. DUNN: Court's indulgence, Your Honor. You know,
10 I can raise it later in the context of that juror when we
11 discuss.

12 MR. CANTWELL: Judge, if I may, Christopher Cantwell.
13 With regard to 213, I had handed you a question geared at
14 checking -- you know what I'm talking about?

15 THE COURT: I know, and I deliberately didn't ask it
16 because I thought it was humiliating, and I just didn't want to
17 embarrass the gentleman.

18 MR. CANTWELL: It wasn't my intent. I hope you
19 understand. I think I have reason to have concerns about it.
20 He said he doesn't understand the questions.

21 THE COURT: Well, I understand that, but I just felt
22 like it was --

23 MR. CANTWELL: I'm sympathetic to that view.

24 THE COURT: I mean, no offense to you over the
25 question, but I think you can judge that from what you saw.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MR. CANTWELL: Okay.

2 THE COURT: All right. Call the first one on the
3 list --

4 MS. DUNN: Your Honor -- sorry, Your Honor.
5 Apologies.

6 THE COURT: The first one on the list.

7 THE CLERK: 185.

8 THE COURT: 185?

9 MR. KOLENICH: Your Honor, Juror 185 stated that he
10 strongly approved of statue removals, he was concerned about
11 all other racial prejudice except against whites, and he
12 actually wrote "white supremacy" on a line that wasn't asking
13 that question as something he was deeply concerned about. Most
14 importantly, when he was asked could he -- could he render a
15 verdict despite these personal opinions, he said he would try
16 his best. He hoped he could. Things like that. He never
17 really got around to saying yes, he could.

18 Most of the other jurors we passed today and examined
19 said "yes, sir, I can," or "no, sir, I can't." This guy, no
20 doubt due to inherent honesty, said "I can try." It's our
21 position that that's insufficient and that he's not a competent
22 witness.

23 THE COURT: Yes.

24 MS. DUNN: Your Honor, contrary to what defense
25 counsel just said, this person was expressly asked whether he

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 could follow the law as the Court instructs and apply it to the
2 evidence and his response was, verbatim, "Yes, sir." And if
3 plaintiffs fail to prove our case, will you be able to follow
4 the law as the Court instructs? And he answered, "Yes, sir."
5 So those questions were asked directly to him by the Court and
6 those were his exact responses.

7 MR. KOLENICH: Admittedly, Your Honor, those were his
8 responses, but after giving those responses he went back to
9 saying "I'd try my best, I'd try my best."

10 MR. SPENCER: We're speaking about 185, correct?

11 I found it very concerning that he claims in his own
12 words that demonstrations about hate are unacceptable. That
13 seems to be a strong, unconditional idea, that a white
14 nationalist or any other controversial group, in his mind, does
15 not have a right to demonstrate.

16 THE COURT: All right.

17 MS. DUNN: Your Honor, that is not at issue in this
18 case. This individual is asked expressly by the Court whether
19 he could follow the law and the facts and have that solely
20 dictate his judgment, and he said that repeatedly.

21 THE COURT: Well, saying it doesn't necessarily
22 answer the question of whether he stands indifferent to the
23 cause so that he could be fair.

24 MS. DUNN: Your Honor, I think that there have been
25 jurors that have been qualified who are very similarly situated

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 to this individual. I can look back at the last panel, but
2 there was one woman in particular, her views were very extreme;
3 Your Honor questioned her, and she said that she could follow
4 the law and the facts. This is not a different case than that.

5 And so, you know, the defendants can use their
6 strikes on this person, but there is no reason not to qualify
7 him.

8 THE COURT: Well, it's my opinion after hearing him
9 that I do not think he stands -- approaches the case in a
10 manner that he could not be -- find it very difficult to -- I
11 think it would be very difficult for him to set aside his idea
12 about what took place, unlike most of the jurors that I've
13 seen. He has a very strong view. So I'm going to excuse him
14 for cause.

15 Who is the next one?

16 THE CLERK: 190.

17 THE COURT: 190?

18 MS. DUNN: Your Honor, I believe we discussed cause
19 challenges to 190 already.

20 THE COURT: What?

21 MS. DUNN: Your Honor, I think at the time of when
22 juror 190 came to the Court, you asked the parties already
23 about cause, and I believe this has been decided already.

24 THE CLERK: I thought it was overruled. I marked it
25 as overruled.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MR. KOLENICH: We concur with that.

2 THE COURT: Who is next that we haven't taken up for
3 cause?

4 THE CLERK: 197.

5 MR. CANTWELL: Did we get to 194?

6 MR. SPENCER: He's already been struck.

7 THE COURT: Anyone challenging 194 for cause?

8 MR. SPENCER: 197, you mean?

9 THE COURT: 194 we've already excused.

10 THE CLERK: It's 197.

11 THE COURT: 197. Anyone challenging 197 for cause?

12 MR. CANTWELL: I will if nobody else is. He has --
13 he's indicated he was very concerned about racism, but not
14 racism against whites. He did not answer the impartiality
15 questions on the survey, even though he said he had read a lot
16 about the event and about the death of Heather Heyer. If he
17 has read that much about it, I think he should answer the
18 impartiality questions, and I think it's suspect that he didn't
19 on the survey.

20 THE COURT: All right. I think he's qualified and
21 deny the motion for cause.

22 THE CLERK: 206.

23 MR. KOLENICH: Your Honor, we believe 206 is not a
24 competent juror. He's expressly and openly hoping that the
25 plaintiffs win the case. He also states that he doesn't have

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 the vaguest idea what racism against white people is. This
2 individual is pulling for the plaintiffs and as much as told
3 the Court that he's going to explicitly make a race-based
4 decision.

5 THE COURT: Would you like to respond?

6 MS. DUNN: Yes, Your Honor. This juror is qualified.
7 And I'm just going to read his responses because, on every
8 question that he was asked, he gave an answer that is textbook
9 impartiality. He said he could render a verdict that's fair to
10 both plaintiffs and defendants. He was asked, can he set aside
11 any feelings he might have. He said, "I think I could. I
12 would consider things objectively." He was asked, if the
13 plaintiffs failed to prove their case by a preponderance, can
14 you find for the defendants? He said to be fair, he would go
15 with the defense if we did not prove our case.

16 He was then asked if the white nationalists had a
17 right to rally. He said they do have a right. He believes in
18 standing by rights. And so, you know, again -- Your Honor,
19 somebody sent me a note asking if you could hear me.

20 THE COURT: I was hearing you okay.

21 MS. DUNN: Okay. Great. Thank you.

22 I mean, 166, who was retained in the last panel, said
23 that she would try to follow the law. She would try to get
24 past her extreme views that she had where she talked about
25 Antifa being a terrorist organization. And she didn't say that

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 she could be fair. This juror was much stronger than she was,
2 and she was deemed qualified.

3 THE COURT: You know, we take up each juror
4 separately. Going back -- you know, if we've got to go through
5 all the jurors, I mean, I hear the juror speaking, I examine
6 the juror's demeanor, and all of that goes into it. And then
7 you bring up a few things one juror said and say, therefore,
8 any juror ought to be qualified, and it doesn't work that way.
9 Every juror has to meet the qualification.

10 And I know, you know, the insinuation here. But I'm
11 trying to do the best I can to get a fair and impartial jury,
12 one that will pass muster.

13 MS. DUNN: I understand, Your Honor, and we are
14 aligned in that goal. I think we've been here all day
15 listening to people say their views, and all we're doing is
16 raising the comparison point.

17 But taking this individual juror on his own, his
18 answers very much were very expressly that he could render a
19 fair verdict either for the plaintiff or defense.

20 THE COURT: All right. I think the juror is
21 qualified. I will not strike him for cause.

22 Yes.

23 MR. SPENCER: Have you reached a final decision or
24 could I speak on this?

25 THE COURT: Yes.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MR. SPENCER: Thank you. I was very concerned about
2 his discussion of his daughter. And describing your daughter
3 as very concerned about racial justice, that seems to be a kind
4 of identity for her, which is of course okay. But the idea of
5 going against your own daughter just seems too difficult a
6 burden for anyone to achieve.

7 The other aspect that concerned me, just to put a
8 finer point on it, yes, people can say the right things
9 sometimes, but you have to look underneath that. He said that
10 I won't find for the plaintiffs if they put their case together
11 correctly or something, almost in a performative manner. I
12 think he was clearly messaging that he knows they're going to
13 have a good case, as I know they will.

14 THE COURT: Wait a minute. I've got this juror at
15 the time, he's the one that said the plaintiff -- he hoped the
16 plaintiff would put their case together --

17 MR. SPENCER: Yes. He said I'm hoping they're going
18 to do a good job.

19 MR. SMITH: It was excruciating to watch, Your Honor.

20 THE COURT: I think he shows an undue bias toward the
21 plaintiffs' side of the case and I don't think he's qualified
22 to serve. And I don't think there's any other juror that is
23 equal to him on those comments. I don't think you can come
24 into court and say, well, I'm pulling for the plaintiff.

25 MS. DUNN: Your Honor, we understand.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Thank you. All right. Next?

2 THE CLERK: 207.

3 THE COURT: Who is 207? Any objection for cause?

4 Any objection for cause?

5 MR. SPENCER: I have no objection.

6 MR. CANTWELL: Still on 207, right? No objection for
7 207.

8 THE COURT: No objection?

9 MR. SPENCER: No objection.

10 MR. CANTWELL: No objection.

11 THE CLERK: 210.

12 THE COURT: Mr. Cantwell, is this the one we had the
13 question about?

14 MR. CANTWELL: No, the cognitive question, that was
15 213, Judge.

16 THE COURT: Okay. 213.

17 MS. DUNN: Your Honor, we'd like to address 210.
18 210.

19 THE COURT: 210, all right.

20 MS. DUNN: So 210 at no point today was wearing his
21 mask properly over his nose and mouth despite the Court's
22 instruction. And I know he was asked a little bit about this.
23 On his questionnaire he says he has anxiety and discomfort and
24 that if he has to wear the mask the full time, he won't be able
25 to do that. I -- he never definitively said that he could. He

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 said, I was okay today. And so just based on what we saw, this
2 individual at no point today wore his mask properly, and I
3 think there's real reason to be concerned and to doubt that
4 he's going to be able to do this.

5 I also think there's a problem for him. He said that
6 when he's with other people, I think he could very well have a
7 problem, not just day-to-day in the trial, but in
8 deliberations. So we had sent a question of that nature to be
9 asked and I think he just kept saying, "Well, I'm okay today."
10 I think there's genuine reason to be very worried about him.

11 THE COURT: Okay. I felt he's qualified. I deny the
12 motion for cause.

13 Who else?

14 THE CLERK: 212. Any objection to 212? Any
15 challenge to 212?

16 MR. SPENCER: Your Honor, I found it difficult to
17 really understand potential Juror 212. She didn't answer her
18 questions either on the -- on the questionnaire or before the
19 Court with any thoroughness. It just seems to be a rather
20 dubious case of -- I can't really explain to you -- I can't
21 articulate a cause against her, but I -- I feel like this is
22 someone who might not really want to be in this and want to
23 participate.

24 THE COURT: I think I saw here that she had been on a
25 jury and had been foreperson, not that that makes -- oh. She

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 was not the foreperson.

2 Well, I don't think there's any legal excuse. She's
3 qualified.

4 THE CLERK: The last is 213.

5 MR. SPENCER: Your Honor, this man did not answer the
6 vast majority of his questionnaire. He answered your own
7 questions, which were presented perfectly. He answered them
8 incoherently, to be frank. Along with his serious health
9 concerns which he expressed about arthritis, I don't see this
10 person as competent in the sense that he can see facts and
11 evidence in the law and formulate his own opinion.

12 THE COURT: All right. Any objection?

13 MS. DUNN: Response to defense: We disagree. With
14 regard to the arthritis, the Court asked him whether he had
15 appointments during this trial. He said no. He understood and
16 answered whether he could follow the law, whether he agreed or
17 not. You asked him whether he formed any opinions. He said
18 no. He had no opinion, and was asked directly, about who was
19 at fault, and he was also asked whether he could make
20 individual determinations as among defendants. He said yes. I
21 think he understood all those questions and gave --

22 THE COURT: All right.

23 MS. DUNN: -- understandable answers.

24 THE COURT: I'm sorry. I didn't mean to cut you off.

25 MS. DUNN: No, Your Honor.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: I think I should have probably asked the
2 question I didn't ask, but what's his number?

3 MR. SPENCER: 213.

4 THE COURT: Ask 213 to come back.

5 All right. Sir, the question I overlooked asking
6 you: This case contains numerous defendants and numerous
7 plaintiffs and complex facts and evidence. Are you confident
8 you can keep track of complex information over a
9 four-weeks-long trial?

10 MALE JUROR: Yes, I can.

11 THE COURT: Thank you. That's all I needed to ask.

12 All right. I find the juror qualified. I deny the
13 motion --

14 MR. CANTWELL: Judge, may I speak on this very quick,
15 please? Christopher Cantwell.

16 THE COURT: Sir?

17 MR. CANTWELL: I may, or no?

18 THE COURT: I'm sorry?

19 MR. CANTWELL: I'm asking if I may speak on this
20 before you make your final decision.

21 THE COURT: Okay.

22 MR. CANTWELL: I think you had it right the first
23 time, Judge. The man said he did not understand the questions,
24 which is why he didn't answer them on the sheet of paper. I
25 asked you to ask the question before, and you considered it so

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 obvious that it wasn't necessary to ask him the question.

2 THE COURT: No, that wasn't it. I just thought it
3 was insulting, and I thought it -- and that's what I felt I
4 would feel, is insulted, if somebody asked me that question.

5 MR. CANTWELL: I can understand.

6 THE COURT: And I really just didn't want to
7 embarrass the man.

8 MR. CANTWELL: Understood, Judge. Thank you.

9 MR. SPENCER: Your Honor, the issue that the
10 plaintiffs raised of, he has no preconceived views on Unite the
11 Right, I think this speaks to my broader point. The idea that
12 one lived in Charlottesville and there was a media saturation
13 of the event -- it was all that anyone talked about. In the
14 subsequent months whenever a politician would mention Unite the
15 Right or "both sides" or a Trump rally, everyone who have an
16 opinion. The fact that he has no preconceived opinion is very
17 disturbing. It strikes me as someone who doesn't participate
18 in the public sector in any way.

19 That's of course his right. That's fine. But that's
20 not someone who will ever conceive of any opinion. And they
21 ultimately are going to have to reach a conclusion on this
22 case. I don't feel he's a competent and someone who can look
23 at facts, look at the law, and say, "This is what's right.
24 That's what's wrong."

25 THE COURT: Thank you. I think he's qualified. And

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 he's on the panel.

2 Okay. How many do we have?

3 All right. We have six we'll take up now for
4 peremptory strikes.

5 THE CLERK: Would you like me to call the numbers to
6 verify?

7 THE COURT: Yes.

8 THE CLERK: I'll call out the numbers that I have
9 marked. Ready?

10 I have 183, 185, 206 -- I'm sorry. Let me call from
11 the right list so you're not jumping all over the place. I'm
12 sorry.

13 MS. DUNN: Sorry, Ms. Wheeler. Are these jurors that
14 have been excused --

15 THE CLERK: Yes.

16 MS. DUNN: -- or remain?

17 THE CLERK: Correct.

18 MS. DUNN: Excused.

19 THE CLERK: I have 183, 185, 186, 189, 194, 196, 203,
20 206.

21 THE COURT: Would you all like ten minutes?

22 MS. DUNN: Yes. Yes, please.

23 THE COURT: Then we'll adjourn.

24 (Recess.)

25 THE COURT: Call the -- are you all ready?

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE CLERK: Yes, Judge.

2 THE COURT: Okay. We'll call the jury in.

3 **(Jury in, 6:11 PM)**

4 THE COURT: All right. Members of the jury, I'm
5 sorry you've had to stay here so long, but it's a question of
6 staying a little longer or coming back tomorrow morning.

7 I know it sounds like it's a deluge out there. I
8 think we're going to try to work to let you all go down to the
9 lower level in the garage, and maybe we can give you a ride to
10 wherever your car is so you won't get so wet trying to get back
11 to your car.

12 We're now ready to proceed with the final part of
13 this exercise.

14 You may proceed.

15 THE CLERK: Ladies and gentlemen, I just want to
16 mention at this point in the procedure -- you've been going by
17 your juror number. At this point, we're going to be
18 referencing a different number and a random procedure. So you
19 will not hear your number at this point right now.

20 Plaintiffs, Juror Number 1, pass or challenge?

21 MS. DUNN: Pass.

22 THE CLERK: Defendants, Juror Number 1 --

23 MR. SPENCER: Hold on. I don't have the numbers of
24 the jurors on my sheet -- you know, on the judge's list. So we
25 just want to make sure that we're doing this right.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 MR. JONES: Jim has got them.

2 MR. SPENCER: All right. I'm satisfied.

3 THE CLERK: Defendants, Juror Number 1, pass or
4 challenge?

5 MR. KOLENICH: Challenge.

6 MS. DUNN: Your Honor, may we approach?

7 THE COURT: Yes.

8 MS. DUNN: Thank you.

9 (Side bar.)

10 MS. DUNN: First of all, under the Fourth Circuit
11 law, we do not have to wait until there is a pattern because
12 once there's a pattern, it's too late, and that's particularly
13 true when there aren't that many minority jurors.

14 The case on that is Thigpen v. Shields, as I'm sure
15 you know. So this juror's answers -- oh, you can't hear?

16 So to say it one more time, you don't have to wait
17 until there as a pattern under Fourth Circuit law. The case is
18 Thigpen v. Shields, and that's particularly the case --

19 THE COURT: Which juror is this?

20 MS. DUNN: This is the juror --

21 MR. KOLENICH: Black male, shaved head, beard.

22 MS. DUNN: He's the one -- I can tell you the
23 questions he was asked. Have you come to any conclusions? Can
24 you be fair to both plaintiffs and defendants? Can you decide
25 the case solely upon the evidence and the law? He gave the

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 most impartial answers to all of these. It was textbook
2 impartiality.

3 You said, "Do you have preconceived notions?" He
4 said, "Everyone makes their own choices about what they want to
5 do." You say -- and he says, "I have no prejudice or bias."

6 He was asked a question from the defendants, "Can
7 white nationalists demonstrate?" He said any group that gets
8 legal written permission are able to do it, which is
9 essentially part of the defendants' defense in this case.

10 Then he was asked, "Can white people be victims of
11 racism?" And he said, "Everyone can be victims of racism."

12 There is no race-neutral reason to dismiss this
13 juror.

14 MR. SPENCER: We're not asking to dismiss him due to
15 race.

16 THE COURT: Anything else?

17 MS. DUNN: Well, Your Honor, under the law in the
18 Fourth Circuit, it does ask you to compare answers from jurors,
19 but I know that Your Honor did not appreciate that. So --

20 THE COURT: Well, I do appreciate it, but --

21 MS. DUNN: -- I don't want to upset you.

22 THE COURT: -- this is a different situation.

23 MS. DUNN: Okay. So the three jurors who have
24 already been seated gave answers that evinced slightly, or more
25 than slightly, less impartiality than this juror.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 So Juror 177 said he had formed views about Antifa,
2 said he had views on the evidence already, whereas Juror 197,
3 this juror, said he had no views on the case.

4 Juror 168, who has also been seated, said they did
5 have personal views, but would try to keep their views out of
6 it, whereas this juror, 197, said he had no preconceived views
7 at all.

8 Juror 164 expressed unfavorable views of Black Lives
9 Matter and unfavorable views of Antifa, and said that she had
10 heard about the case and described it as a nightmare, whereas
11 this juror had no views at all, said no preconceived views at
12 all, and said that everyone has a right to protest if they have
13 legal authorization.

14 His answers could not have been more impartial.

15 MR. REBROOK: If I may, Your Honor, Edward ReBrook.
16 Would it be possible -- Edward ReBrook. Would it be possible
17 to revisit this exact issue after, say, the next three jurors,
18 and I think that will perhaps put a different spin on this
19 entire topic?

20 THE COURT: What I anticipated was telling -- if this
21 issue came up was to wait until the end of the panel, bring any
22 juror that was in question, bring them back to the Court and
23 make the final selections and swear the jury in.

24 MS. DUNN: Your Honor, the -- here's the problem with
25 that. Your Honor already said --

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 (Stenographer interruption.)

2 THE COURT: Okay. What I said was that my intention
3 would be -- I mean, I've been concerned about this issue all
4 along, given the way we're picking the jury, that if there were
5 a potential Batson issue, I would have the juror who was the
6 subject of the Batson challenge come in and be here when the
7 last panel was completed and look at the jury at that time and
8 see if there was a pattern, and then why.

9 MS. DUNN: I think, Your Honor, the problem with that
10 is that there doesn't have to be a pattern. There can be a
11 Batson challenge to this individual juror. And he is a
12 textbook Batson challenge. You don't need a pattern with that.

13 THE COURT: Okay.

14 MS. DUNN: What's happening here is that the
15 defendants have already raised with one of --

16 THE COURT: All right. Well, okay. Let's hear it.

17 MR. SPENCER: It's hard for me to believe that a
18 pattern exists at this point, when we're actually going to be
19 challenging a white potential jurist, and we support the other
20 African American jurist. We're actually behind them. So this
21 idea that there is some kind of a Batson challenge based on
22 racial bias is -- doesn't hold -- what?

23 THE COURT: There's not but one other African
24 American.

25 MR. SPENCER: There are two others, actually. We --

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE COURT: Two?

2 MR. SPENCER: There are three African American men in
3 this jury pool.

4 THE COURT: You mean later?

5 MR. SPENCER: Yes. And we actually supported the
6 other two. So the notion that we're engaging on a decision
7 based on race doesn't hold water. Claiming the pattern is
8 unnecessary. I mean, give me a break.

9 MS. DUNN: Your Honor, that -- let me -- okay --

10 THE COURT: What is it?

11 MS. DUNN: This is not the law. The law is this is a
12 challenge to this juror who came up first. And what's
13 happening here, just to be plain about it, is defendants think,
14 out of the pool of black people, this is the black person who
15 would be the worst for them, but it's still -- they have to
16 show that they have a race-neutral explanation for this. And
17 they don't, and they can't --

18 MR. SPENCER: I just did.

19 MS. DUNN: -- based on his answers.

20 MR. SPENCER: I just did. We don't need to express
21 to you our entire thinking. We can make decisions. Do you
22 want to write a dissertation on every jurist you challenge?
23 You challenged the last two.

24 THE COURT: What is your cited case?

25 MS. DUNN: So the case that says you don't need a

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 pattern is Thigpen v. Shields, Thigpen,
2 T-H-I-G-P-E-N, v. Shields.

3 Also, another good case to look at that says you
4 should compare the questions of jurors asked and not asked is
5 US v. Gradison, another CA4 case.

6 THE COURT: Have you ever gone through a process of
7 selecting a jury like this --

8 MS. DUNN: In a case --

9 THE COURT: -- where the Batson was raised in the
10 middle of the selection?

11 MS. DUNN: Another case I would point Your Honor to
12 is that --

13 THE COURT: Well --

14 MS. DUNN: -- United States v. Joe in the Fourth
15 Circuit. This is the problem with the way that this --

16 MR. REBROOK: If his answers are so perfect, then why
17 are we challenging him and not the other members of the jury?

18 MS. DUNN: Your Honor, it's -- the defendants have to
19 put forward a race-neutral explanation.

20 THE COURT: At this time, do you wish to put forward
21 a race-neutral --

22 MR. KOLENICH: Your Honor, the defense, unlike the
23 plaintiffs, has been cobbled together from multiple different
24 and sometimes contradictory points of view. So we're limited
25 in what we can do --

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 (Overlapping speakers.)

2 MR. KOLENICH: One second, Mr. Spencer. One second.

3 This juror, in the opinion of some of the defendants,
4 had an openly anti-defendant attitude evident from the looks on
5 his face while he was answering the questions. That's the best
6 explanation that I can give for what I was told. So there was
7 an independent-of-his-race reason for them to question him
8 because, at first -- it's not even worth saying. It doesn't go
9 to the legal issues, but this was not a strictly race-based
10 decision that was being expressed among the defendants as to
11 this juror.

12 MS. DUNN: This, by the way, is even worse for the
13 defendants' case, because there is case law that the look on
14 somebody's face who happens to be a black man is not a -- does
15 not survive a Batson challenge. So they don't have a
16 race-neutral explanation and their only explanation is actually
17 bad for them.

18 MR. SPENCER: I would like to see case law on what
19 you just said, but putting that aside, the look on someone's
20 face has no implication in my mind for what it was. His
21 answers were too perfect. And you can't just go by the exact
22 words that someone uses. You have to look beneath them and
23 look at messaging that they're giving and the general
24 sentiment. And that is what I went by.

25 And also, I had a very different opinion on the other

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 two African American gentlemen who were potential jurors. I
2 thought they are absolutely competent and I would support them.

3 THE COURT: Okay.

4 MS. DUNN: This is deeply ironic, given --

5 THE COURT: I'm --

6 MS. DUNN: Your Honor, I have other cases if you want
7 me to --

8 THE COURT: What did you have to say, Mr. Cantwell?

9 MR. CANTWELL: They're asking for a race-neutral
10 reason. I believe the man is lying. I feel the same way about
11 a white man who is on here. That's why I moved to strike. It
12 has nothing to do with his race. I just want to be on the
13 record saying it.

14 (Pause.)

15 THE COURT: Point to the language in the opinion.

16 MS. DUNN: I will need to get the case. I don't have
17 it in front of me.

18 THE COURT: You didn't expect this would happen?

19 MS. DUNN: Your Honor, can I have a moment, please?

20 (Discussion off the record.)

21 MS. DUNN: Hi, Your Honor. So this case says a
22 Batson challenge involves three steps, and then it talks about,
23 first, the party contesting the strikes must make a prima facie
24 case of discriminatory use of peremptory challenges, citing
25 Gradison and Batson.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 " In determining whether the party has established a
2 prima facie case, the trial court considers all relevant
3 circumstances. Those circumstances include, but are not
4 limited to, the pattern of strikes and statements made during
5 voir dire."

6 And then after that, after the objecting party makes
7 a prima facie case, the burden is supposed to shift to the
8 striking party to provide a race-neutral explanation for the
9 challenge.

10 THE COURT: I don't see anything in that that says my
11 suggestion or my idea of doing it was wrong, which is bring the
12 jury back at the end, and if I decide that it was not
13 properly -- it was an improper strike, I'll restore him to the
14 jury.

15 MS. DUNN: Your Honor, this issue is so important
16 that, I mean, if we could have a few moments because I think
17 that it is proper to do it on an individual basis. And I
18 think --

19 THE COURT: Well, if you think it's that important,
20 you bring me a bunch of cases, and what you show me, they don't
21 say that. Now, why didn't you bring me the case that says what
22 you --

23 MS. DUNN: Well, this just happened.

24 THE COURT: Well, this just happened, but you were
25 prepared for it because you brought me authority and said it

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 said something, and it doesn't.

2 MS. DUNN: Okay.

3 THE COURT: Okay? I mean, I don't know what you're
4 going to do to get other authority.

5 MR. KOLENICH: Judge, we don't object to giving them
6 ten minutes to look into Lexis.

7 MS. DUNN: I mean, this is an important issue.

8 THE COURT: You think I don't know this is important?

9 MS. DUNN: I know that.

10 THE COURT: I mean, fortunately, I'll probably be
11 dead when it's retried.

12 MR. KOLENICH: We'd appreciate the time to come up
13 with some kind of effective defense here.

14 MS. DUNN: The question is whether it's appropriate
15 to take the juror individually or whether you have to wait for
16 a pattern.

17 MR. TOLENTINO: Your Honor, we submit that Thigpen
18 versus Shields stands for the proposition --

19 THE COURT: Show me the language.

20 MR. TOLENTINO: Yes, sure.

21 THE COURT: You and I can talk all day.

22 MR. TOLENTINO: Sure. I can read it for you, Your
23 Honor. It says, quote, "In determining whether that party has
24 established a prima facie case, the trial court considers all
25 relevant circumstances. Those circumstances include, but are

1 Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 not limited to, the pattern of strikes and statements made
2 during voir dire."

3 The "including but not limited to" is key here
4 because it suggests that you don't require that for --

5 THE COURT: All the circumstances. It may not
6 require it, but it says you look at all circumstances --

7 MR. TOLENTINO: Yes, Your Honor.

8 THE COURT: -- and if there is a pattern. You're
9 asking me to decide something on one -- not to look at all
10 circumstances and not determine whether there is a pattern.

11 So.

12 I'm going to adhere to what I said. I will call the
13 juror back, and if at the end I decide there's been a violation
14 of Batson, he goes back on the jury, and the next -- we'll pick
15 somebody else.

16 MR. TOLENTINO: Understood, Your Honor. Thank you.

17 MS. DUNN: Thank you.

18 (Sidebar concludes.)

19 THE COURT: All right. Go to number 2.

20 THE CLERK: Defendant, Juror Number 2, pass or
21 challenge?

22 MR. KOLENICH: Pass.

23 THE COURT: Plaintiffs, Juror Number 2, pass or
24 challenge?

25 MS. DUNN: Pass.

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE CLERK: Plaintiffs, Juror Number 3, pass or
2 challenge?

3 MS. DUNN: Pass.

4 THE CLERK: Defendant, Juror Number 3, pass or
5 challenge?

6 MR. KOLENICH: Pass.

7 THE CLERK: Defendants, Juror Number 5, pass or
8 challenge?

9 MR. KOLENICH: Pass.

10 THE CLERK: Plaintiffs, Juror Number 5, pass or
11 challenge?

12 MS. DUNN: Pass.

13 THE CLERK: Plaintiffs, Juror Number 7, pass or
14 challenge?

15 MS. DUNN: Pass.

16 THE CLERK: Defendants, Juror Number 7, pass or
17 challenge?

18 MR. KOLENICH: Challenge.

19 THE CLERK: Defendants, Juror Number 14, pass or
20 challenge?

21 MR. KOLENICH: Pass.

22 THE CLERK: Plaintiffs, Juror Number 14, pass or
23 challenge?

24 MS. DUNN: Pass.

25 (Pause.)

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 THE CLERK: Ladies and gentlemen, if I call your
2 name, please stand. If I don't call your name, remain seated
3 until you receive --

4 MR. SPENCER: Name?

5 THE CLERK: Number. I'm so sorry. It's so easy to
6 say that.

7 197, 207, 213, 212, and 210.

8 Do you want me just to advise them to go?

9 THE COURT: Yes.

10 THE CLERK: If you're standing, please go on across
11 the hall to the clerk's office and they will advise you what to
12 do.

13 THE COURT: You're going to be called back. You will
14 be called back for potential jury service, and you are not to
15 discuss the case with anyone. You're not to allow anyone to
16 discuss it with you. Do not remain within hearing of anyone
17 discussing the case. And do not read, investigate, or do
18 anything pertaining to the case until you're sworn in as
19 jurors. And then you'll be told not to discuss the case until
20 you've heard all the evidence.

21 So you may be excused at this time, and I think we
22 have been able to arrange a ride for you to your car.

23 Go ahead.

24 All right. Thank you, jurors who are not serving in
25 the case. We could not have gotten where we are without you

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 and it was essential that we have you here in order to pick the
2 jury. So you have performed a great service to your community
3 merely by coming in and participating in the jury selection.
4 You're excused at this time. Again, I'm very sorry you had to
5 wait so late and I hope you don't get wet.

6 **(Jury out, 6:44 p.m.)**

7 THE COURT: All right. Tomorrow I'm only calling in
8 two panels. I don't believe, given the time it's taken,
9 there's any way we would get past two panels tomorrow. And so
10 we may have to pick five or six jurors tomorrow and see. But
11 we'll -- so the earliest we could possibly start the trial now
12 is Friday morning -- Wednesday morning. But it could be -- I
13 would assume that we would probably be able, if things go like
14 they are, at least by noon on Wednesday we should have enough
15 for a jury. And if we do, I would like to start with opening
16 statements in the afternoon.

17 And I know you're waiting for that preliminary
18 instruction.

19 Do you have something?

20 MS. KAPLAN: Your Honor, just one thing. Juror 210,
21 maybe I'm a bit paranoid about COVID, but Juror 210 again, just
22 when he was sitting here, was again wearing his mask under his
23 nose. Perhaps he could be given some instruction. That way --
24 after having --

25 THE COURT: I'll ask the marshals to take -- keep an

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 eye on him. I don't watch him. You know, I mean, other things
2 going on.

3 MS. KAPLAN: Of course, Your Honor. I just happened
4 to look.

5 THE COURT: I'm sure you're probably right, but
6 there's always one or more that slack up.

7 MS. KAPLAN: Our concern is just that it disturbs --
8 when we start, the other jurors get disturbed by it, obviously,
9 and we don't want that to happen.

10 THE COURT: We'll start at 9:30 tomorrow morning.

11 Anything before we leave for the evening?

12 MR. KOLENICH: No, Your Honor.

13 MS. DUNN: No, Your Honor.

14 THE COURT: Okay. Thank you.

15 (Proceedings adjourned, 6:46 p.m.)

16

17

18

19

20

21

22

23

24

25

Sines, et al. v. Kessler, et al., 3:17CV72, 10/25/2021

1 C E R T I F I C A T E

2 I, Lisa M. Blair, RMR/CRR, Official Court Reporter for
3 the United States District Court for the Western District of
4 Virginia, appointed pursuant to the provisions of Title 28,
5 United States Code, Section 753, do hereby certify that the
6 foregoing is a correct transcript of the proceedings reported
7 by me using the stenotype reporting method in conjunction
8 with computer-aided transcription, and that same is a
9 true and correct transcript to the best of my ability and
10 understanding.

11 I further certify that the transcript fees and format
12 comply with those prescribed by the Court and the Judicial
13 Conference of the United States.

14 /s/ Lisa M. Blair

Date: October 25, 2021

15

16

17

18

19

20

21

22

23

24

25